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FOUNDED BY JOHN D. ROCKEFELLER

THE LEGAL PROTECTION OF WOMAN AMONG THE ANCIENT GERMANS

A DISSERTATION SUBMITTED TO THE FACULTIES OF THE GRADUATE SCHOOLS
OF ARTS, LITERATURE, AND SCIENCE, IN CANDIDACY FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

(DEPARTMENT OF HISTORY)

BY

WILLIAM RULLKOETTER

CHICAGO

The University of Chicago Press

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INTRODUCTION.

WHEN the Roman people began to degenerate, the Germanic race emerged from obscurity, and supplied the vitality and vigor essential for the development of a new civilization. To this uncultured, youthful, and impulsive race was intrusted the task of destroying the decaying fabric of imperial Rome, and of reconstructing society on a new basis. From that time the Germanic people have played a predominant part in the history of the world. An inquiry into the characteristics, the special qualities, which have enabled them to exert a determining influence upon the destiny of mankind is therefore not one of mere curiosity or passing interest, but a prerequisite without which the history of modern civilization is a sealed book.

Among the distinguishing traits of the ancient Germans which may be regarded as the basis of the great achievements of the race are their simple mode of life, untainted by the vices of a higher culture; their love of individual liberty and equality, expressed in their democratic institutions, and the all-controlling assembly of the freemen in arms; their love of war, fixed and inspired by their religious ideals; their purity and sanctity of family-life, so striking in contrast with the immorality of Roman society. These traits, acquired during the pre-historic period, constituted the endowment which was the earnest of a healthy and progressive development of the race.

While all these characteristics were determining elements in the life of the people, the one relating to the home and the family was the most essential; for the family is the foundation of the social structure, an expression of its soundness or decay. The fate of a people is decided there; the future history of a race is written in its home-life.¹ But we may go a step farther. The center of the family is the wife and mother. On her depends largely the well-being of its members. Her influence is a vital force in shaping the character of those who are gathered within the family circle. Consequently the position assigned to woman in the family and society at large is of the highest significance. Her natural desire for order and stability is opposed to the destructive and roving inclination of man; her refined and more sympathetic nature is the source of high ideals essential to the advancement of civilization;²

¹ DR. H. HERKNER, *Die Arbeiterfrage*, p. 16.

² GÜNTHER, *Weib und Sittlichkeit*, pp. 2, 20; LORENZ V. STEIN, *Die Frau auf dem Gebiete der National Oekonomie*, p. vi.

and it may be said that the civil and political capacity of a people is primarily determined by the degree of influence conceded to woman.

These general facts are not new, but usually they do not receive the emphasis which they deserve. Too frequently the importance of woman's influence is obscured by the striking deeds and events which are themselves the result of this influence. The fundamental forces, decisive in the development of races and nations, are commonly less observable than the splendor and superficial power displayed before the eye; and in what may be called the broad mean of historical study the power exerted by woman upon the organizing life of a people is, if at all, only incidentally noticed. Nowhere does it receive the prominence commensurate with its importance. It is the poet, rather than the historian, who has grasped and expressed the more fundamental truths. No one has presented this more forcibly than Shakespeare. In the words of Ruskin: "The catastrophe of every play is caused always by the folly or fault of man; the redemption if there is any by the wisdom and virtue of woman, and failing that there is none" (*Sesame and Lilies*). When Goethe closed his great work *Faust*, in which he had woven the rich experience of a long life, with the following words,

The eternal womanly
Draws us above,

he stated a fact as well established as any historical fact.¹ It embodies the primary truth that woman is the inspiring cause of higher ideals of living, and that upon her, more than upon man, depends the healthful progress of civilization; and that a people which degrades woman cannot escape degeneration and moral decay.

As "the eternal womanly" is a power for good, the degraded woman is an equal power for evil. History is not lacking in illustrations. The decline of Greece and the exclusion of decent women from society go hand in hand.² When in Rome woman sank to the level of man, abandoned her high calling of wife and mother and lived a life of selfish independence, the empire was doomed.³ Perhaps the most remarkable

¹ WALT WHITMAN expresses the same thought in the "Song of the Redwood Tree":

You womanhood divine, mistress and source of all,
Whence life and love and aught that comes from love.

² "It is one of the most remarkable, and to some writers the most perplexing facts in the moral history of Greece, that in the former and ruder period women had undoubtedly the highest place and that their type exhibited the highest perfection." (LECKY, *History of European Morals*, Vol. II, p. 227.)

³ "Those people," says GÜNTHER, "whose women wantonly turn their backs upon good morality and seek to pass beyond their natural sphere, who see their freedom in competing with men in shamelessness and sensual enjoyment, are finally doomed to destruction, even when apparently they are the embodiment of the highest power." (*Weib und Sittlichkeit*, p. 2.)

example of the consequences due to the degraded position of woman is furnished by the history of those races that have accepted the Mohammedan religion. When Mohammed condemned her to be veiled, and to be watched by her husband as a being unworthy of trust and confidence, he fixed a low level beyond which Mohammedan civilization could not pass. As the historian Müller expresses it: "A trivial incident in the life of Mohammed was the cause of depriving 200,000,000 of people in the nineteenth century of the moral influence of nobler womanhood and of affecting forever their destiny."¹ Mohammed gave to the degradation of woman the sanction of religion and ordained it by law. He compared woman to a field which could be used or abused to suit the whim of man. The Koran states that 'the paradise of women is under the heels of their husbands.' Heaven itself was made possible to her only through the intercession of her husband. When wives did not obey, they were to be beaten. This command was imparted to the prophet by the angel Gabriel! Divorce was made easy and simple. The wife might be divorced without any excuse, and the husband contributed very little to her support. The degradation of woman is common to the East. All the great religions, and among them the Christian religion, sanction it. The oriental Christians are in this respect not superior to the people of other creeds.² The saying of Confucius, "Man is the representative of heaven and controls all things; woman must obey the orders of man and aid him in carrying out his principles," is repeated by the apostle Paul in the New Testament.³ These precepts, embodied in the great religions of the world, have had a far-reaching influence in determining the civilization of races and nations. It would scarcely be an exaggeration to say that civilization has advanced to the same extent that these precepts have been abandoned.

In studying the history of a people, the position assigned to woman is, therefore, of eminent significance. The laws and customs governing her relations to the family and to society at large contain the secrets of strength and weakness of the social organization of which she is a part. The recognition of this primary force in the evolution of society is the reason for the present investigation. In order to indicate the line of thought which prompted the inquiry, and to show the purpose of the work, the introduction presents a broad outline of the subject.

¹ *Allgemeine Geschichte*, Vol. I, p. 134.

² OSMAN-BEY, *Die Frauen in der Türkei*, pp. 4, 7, 12, 13, 17; HENNE AM RHYN, *Die Frau in der Kulturgeschichte*, p. 208.

³ BRANDT, *Sittenbilder aus China*, p. 4; 1 Cor., chap. II.

The study itself will be confined to the primitive social life of the Germanic people.

When the Germans first appeared in history, woman held a highly influential place among them.¹ This phase of their social life was so striking that it impressed itself strongly upon foreigners and called forth their admiration. In the words of Tacitus: "They [the Germans] believe their women to possess something of the divine and of prophecy, neither do they spurn their counsel nor neglect their advice,"² we have, perhaps, the explanation of the high place which woman held and of her extraordinary influence, and, furthermore, of the vigor and success of this youthful race.

With the great migration and introduction of Christianity a counter-tendency was set in motion. Oriental and Roman ideas of womanhood were disseminated among the German people. Asceticism, misinterpretation, and misapplication of the teachings of the Bible, not to speak of the sordid motives of men in authority, did much to degrade woman; even a strict interpretation of the Scriptures was at variance with the high ideals of these crude barbarians. Many passages, and especially the writings of the apostle Paul, assigned to woman a position in accordance with oriental notions, far inferior to man, subject to his will, and subservient to his glory.³ To enter into a discussion of what the Bible taught or did not teach in regard to woman is not the purpose here. However, it is necessary to speak briefly of the consequences which the introduction of Christianity had upon the position of woman, and to show how far the dissemination of the oriental conception of womanhood tended to deprive her of that influence so marked in the civilization of the Germanic nations, and how far the Germanic spirit prevented these conceptions from becoming dominant in the West.

This question has never been clearly put, nor an attempt made to answer it intelligently. It is generally assumed that all which is best in our civilization is a natural result of the Christian church. The very essential fact that this religion has received its highest development among the Germanic nations, and that by them it has been made a power for the advancement of civilization far more effective than any other people has been able to make it, is left unnoticed. A moment's

¹ WAITZ, *Deutsche Verfassungsgeschichte*, Vol. I, pp. 48, 49. ² TACITUS, *Germania*, c. 8.

³ Gen. 3:16; 1 Cor. 11:3, 7-9; 14:34, 35; Col. 3:18; Eph. 5:22; Titus 2:5. ECKENSTEIN, *Woman under Monasticism*, p. 7; OSMAN-BEV, *Die Frauen in der Türkei*, p. 5; DARGUN, *Studien zum Familienrecht* p. 130; KRABBE, *Die Frau im altfranzösischen Karls-Epos*, p. 7.

consideration of the facts will make it evident that this race possessed qualities and capacities which were as necessary to our modern civilization as Christianity itself; for wherever the Germanic spirit and Germanic influence has been excluded Christianity has failed to produce its best results.¹

The Abyssinian and Armenian Christians are living witnesses of the fact that the possession of the Bible and the profession of Christianity may mean very little. A comparison of the religious life of the Romance nations and their colonies with that of the Germanic nations and their colonies, although in a less degree, attest to the same fact. The character of the people remains ever a great factor in determining the value of any religion.

All the great religions originated in the Orient, and for that very reason could not be favorable to woman; for to the oriental mind she has always been an inferior being. Even at the present day no change has taken place in this respect among the Christians of the East. There she is nothing more than a servile drudge.² That these perverted notions have not come to prevail in Europe has been mainly due to the racial characteristics of the Germanic people. The Slavic and Romance nations have, to a great extent, accepted the oriental notion of womanhood. Among the lower classes in Russia,³ as well as among the people of southern Europe and the Latin American states, these notions are still dominating the sexual relations.⁴

In studying the history of the early Christian church, the hostile attitude of the representatives of the church toward woman is so evident that it cannot be mistaken. As a general and concise statement of this attitude I quote Mr. Lecky. He says:

The combined influence of Jewish writings, and of that ascetic feeling which treated woman as the chief source of temptation to man, was shown in those fierce invectives, which form so conspicuous and so grotesque a portion

¹ The facts presented in this form should not be misconstrued. No one with a slight knowledge of mediæval history can deny the invaluable service of the Christian church during that period. When society was threatened by anarchy and dissolution, when the confusion and wretchedness caused by the great migration tended to sever every social bond and set free every savage instinct in man, then the church, though itself in a measure barbarized, was the only permanent institution that stood for order and civilization. However, this fact should not prevent us from recognizing the vital social forces which had their origin outside of the church, nor should we be blind to the doctrines of the church which were detrimental to the welfare of society, and opposed to the true spirit of Christianity as understood by us. The evolution of society is the result of composite forces, of which religion is the most effective; and, although most effective, it is not independent of the other forces, but is itself determined by them. Let it be remembered that the mediæval church imposed intellectual slavery upon European society, and that it was largely due to the revived power of Greek and Roman thought that intellectual freedom was regained.

² OSMAN-BEY, *Die Frauen in der Türkei*, p. 5.

³ *Ibid.* ⁴ RATZEL, *The History of Mankind*, Vol. I, p. 197.

of the writings of the Fathers, and which contrast so curiously with the adulation bestowed upon particular members of the sex. Woman was represented as the door of hell, as the mother of all possible ills. She should be ashamed of the very thought that she was a woman. She should live in continual penance on account of the curses she had brought upon the world. She should be ashamed of her dress, for it was the memorial of her fall. She should especially be ashamed of her beauty, for it is the most potent instrument of the demon.¹

As good an authority as Gregory of Tours relates, what seems almost incredible, that in an assembly of bishops in the latter part of the sixth century the question was discussed whether woman had a soul, whether she was a human being at all.² She was temptation personified, the source of all evil. The devil appeared ever in a woman's form.³

There were, of course, exceptions. Some women were highly esteemed and exerted a great influence upon society, but the general tendency was degrading.⁴ Her influence in the home as well as in society was diminished. She was an inferior being, tolerated only as a necessary evil. It was regarded a sacred duty to spurn the tender feelings of mother and sister; a holy act to break all bonds of kinship and love by religious cruelty.⁵ Marriage itself, the most sacred of human institutions, was held to be debasing, and imperiling the souls of those who entered into it. Family-life, with all its tender associations, found no favor in the eyes of the ascetic and devout churchman; and, notwithstanding their teaching of chastity, the spreading of such a view of life could not but be detrimental to society, unfitting man for this or any other life.⁶

While no one can deny the great service rendered by the Christian

¹ LECKY, *Hist. of Europ. Mor.*, Vol. II, p. 338.

² GREG. TUR., VIII.

³ *Das Leben d. h. Gallus*, c. 14; GREG. TUR., II, c. 21.

It should be said in justice to these devout men of the church that their view of life in general, and of women especially, was based upon a partial truth. The principle of self-denial, essential to the healthful growth of any life, was accepted by them in its absolute form. It became the all-controlling principle of their lives. They lacked a discriminating judgment. Every earthly joy was sinful. Without endangering their souls they could neither feel pleasure in the song of birds, nor in the delicate beauty of flowers, nor in the study of refined literature. Every act must involve a conflict with their natural desires. The acceptance of a partial truth as a whole truth led them to adopt an unnatural and unreasonable view of life. That with such a conception of sin woman should become an object of horror needs no explanation.

⁴ WEINHOLD, *Deutsche Frauen im Mittelalter*, Vol. I, p. 300.

⁵ MILMAN, *L. Chr.*, Book III, p. 23; *Das Leben d. h. Columba*, c. 3; LECKY, *Hist. of Europ. Mor.*, Vol. II, pp. 125, 127.

⁶ LECKY, *Hist. of Europ. Mor.*, Vol. II, p. 320; GREG. TUR., I, c. 46, c. 47.

church in the Middle Ages¹ by its teaching of mercy, of chastity, and of the brotherhood of man, its attendant evil tendencies were most baneful. This was especially true in affecting the status of woman. She lost the commanding influence of the earlier period. A concrete illustration of this is found in the wergeld of the different periods. In the early laws she is at least placed on an equal with man, and in some cases her wergeld is double or three times that of man; but at the end of the twelfth century it had been reduced to one-half of a man's wergeld.² The clergy had succeeded but too well in having the doctrines of the inferiority of woman accepted,³ nor can any credit be given to them for a revival of the ancient regard for woman. On the contrary, when in the twelfth and thirteenth centuries the idealism born of chivalry made woman an object of esteem and assigned to her a position of influence,⁴ every means was used to suppress this idealism. By the picture of "Lady World," a picture as repulsive as the most debased imagination could conceive, it was sought to fill the people with horror and disgust at this pernicious worship of woman.⁵ The struggle between the tenets of the church and this new idealism was a long and bitter one. But step by step, the church was forced to abandon her position, until the Reformation freed the Germanic nations from the dominant authority of mediæval dogmatism, and among them woman has gradually assumed that position of influence which a healthy social development requires.⁶

¹ There are many examples where the church sought to mitigate the cruel and barbarous practices of the people. This was especially true in regard to the treatment of servants and slaves. The church interposed her authority in behalf of the oppressed, and gave a refuge to those who fled from brutal masters. She also protected marriages between slaves from being dissolved by their heartless owners. (GREG. TUR., V, c. 3.)

² WEINHOLD, *D. F.*, Vol. I, p. 200; J. GRIMM, *R. A.*, p. 406.

³ The doctrine of woman's inferiority to man was fully accepted by some of the most prominent women themselves. St. Hildegard of Bingen, the foremost woman of her time, for example, likened man to the soul and woman to the body, "for the soul is of heaven and the body of earth, and their combination makes human life possible." (ECKENSTEIN, *Woman under Monasticism*, p. 275.)

⁴ EMERTON, *Mediæval Europe*, pp. 507, 508; MILMAN, *L. Chr.*, Vol. II, Book VII, chap. 6, p. 35.

⁵ SCHERER, *Hist. of Germ. Lit.*, Vol I, pp. 71-3.

⁶ It may seem strange that this new religion should from the beginning have appealed more strongly to woman than to man. But the reason is quite evident. It touched all that is best in woman's nature. It proclaimed tenderness, sympathy, and love as the highest virtues. Women were its most ardent missionaries (LA VALLÉE, *Histoire Française*, Liv. I, chap. ii); and not only the most ardent missionaries, but they were eminently successful. Most of the pagan kings of the various Germanic nations were converted through the influence of their Christian queens, a proof of the influence which woman wielded among the Germans, and not, as is frequently implied in such statements, an evidence of her inferiority. Through the unselfish devotion of noble women to the advancement of its humane principles, Christianity has become a world-power for good, and womankind has been rewarded by sharing in the beneficence of a higher civilization. It would, however, be far from the truth that the mere introduction of Christianity raised woman from the position of a servant to her husband to be his equal and companion. (SCHMID *Die Geschichte der Erziehung*, Vol. II, pp. 20, 21.)

The reasons, then, for the more favorable position of woman among the Germanic peoples cannot be attributed to the Christian church directly, and indirectly only so far as the acceptance of the more fundamental principles of the Christian religion fused a more humane spirit into the social life of the people. The explanation must rather be sought in the characteristics of the people developed before they came in contact with Christianity. Their ideals of womanhood and of family-life were so deeply rooted in the character of the people that the mediæval church, with all its power, was incapable to suppress them permanently. These ideals reasserted themselves in the spirit of chivalry,¹ and set free the vitalizing, invigorating, and progressive forces in modern life.

To our western civilization this fact has been of inestimable value. Without this its highest achievements would not have been possible. As long as woman was regarded as a low and impure being, man could hardly be capable of conceiving and living high ideals. The more refined and womanly virtues could have no place in such a society. Servile inferiority of one sex implies brutal superiority in the other, and such an unnatural relation revenges itself in the deterioration of social life.

The subject thus presented in outline will be treated only in part. The investigation will be confined to the facts relative to the status of woman in the early historic period, when purely Germanic ideas were still dominating the social life and determined its conditions. A brief chapter is devoted to the mother-age, in order to bring out its bearing upon the position of woman in primitive life. The social concept and the social estimate of woman form the subject-matter of the following two chapters. Woman in her private relations, in the home and family, concludes this study. The legal protection of woman is emphasized throughout, for it is believed that the permanent social sense finds its clearest and most definite expression in the privileges and safeguards which society provides for its members.

¹ MILMAN, *L. Chr.*, Vol. II, Book 7, chap. 6, p. 35.

CHAPTER I.

THE MOTHER-AGE.

IN the *Germania* of Tacitus we have a general statement in regard to the status of woman among the ancient Germans. He states it as a current report that at times women had turned defeat into victory; that treaties between communities were made especially binding by the exchange of noble maidens as hostages; that the women were believed to possess somewhat of the divine; that their counsel was not spurned, nor their advice neglected; and that formerly some of them received almost divine veneration.¹ From different points of view, and in speaking on special phases of Germanic social life, this high regard for woman is emphasized by Tacitus, and is spoken of in terms of admiration. Other writers of this early period, as well as the traditions of the people, confirm this opinion in many particulars; and it can scarcely be questioned that, in some respects at least, the position of woman was a favorable one. It was favorable when the hard conditions of life in primitive society are considered. In such a society the weaker members are necessarily subject to suffering and hardships, from which the strong escape. The fickleness of nature, the lack of foresight, as well as the untrained passions of man, are usually atoned for by the misery of the defenseless. The ancient Germanic society was not exempted from these primary causes of human suffering; and it is not implied that woman held a favorable position in accordance with modern standards of life, but that under the prevailing conditions, and in comparison with man, she had in this early period greater privileges, and was relatively of greater importance, than in the subsequent period.

Similar social phenomena have been observed among various primitive people, both ancient and modern. It seems to mark a certain stage in the evolution of every race. In explanation of this remarkable position of woman, modern scholars have advanced the theory of

¹ *Memoriae proditur, quasdam acies, inclinatæ jam et labantes, a feminis restitutas, constantia precum et objectu pectorum, et monstrata cominus captivitate, quam longe impatientius feminarum suarum nomine timent: adeo, ut efficacius obligenter animi civitatum, quibus inter obsides puellæ quoque nobiles imperantur. Inesse quin etiam sanctum aliquid et providum putant: nec aut consilia earum adspernantur, aut responsa negligunt. Vidimus, sub divo Vespasiano, Veledam, diu apud plerosque numinis loco habitam. Sed et olim Auriniam et complures alias venerati sunt, non adulatione, nec tamquam facerent deas. TAC., *Germ.*, chap. 8.*

the mother-age, or the mother-right as it was termed by the first great exponent of the theory, Mr. Bachofen.¹

The details of this theory do not concern us here. Certain phases of it, however, are intimately connected with the main subject to be investigated. The theory has been employed to account for the position of woman in early Germanic society;² and it is, therefore, necessary to present briefly some of its principal claims.

What was the mother-age, and what its significance in the history of mankind? In general, it denotes a primitive social state differing fundamentally from our own; a period when the human race struggled darkly to lay hold upon the first elements of order, when the first great step in the evolution of the race was achieved, when the all-pervading love of the mother wove the bonds of affection which made society, progress, and civilization possible.

In the words of Ratzel, the mother-age "takes as the corner-stone of the family the one certain fact in all relationship—the kinship of the children to their mother. . . . The children may be so closely attached to the kindred of the mother that in tribal feuds father and son may fight on opposite sides."³ Obviously, when all rights and privileges, as well as all obligations, were derived from the mother, she would be of greater importance than in the subsequent father-age, when kinship of the father determined all social relations. It has even been claimed that woman held a controlling power in the state, as well as in the family; but, although specific instances of woman's political control have not been lacking, this has been exceptional rather than general. The reason is that she has ever been dependent for protection upon man. As long as the father and husband enjoyed but few rights in her family, her male relatives were the guardians and protectors of herself and children.⁴ As long as she was the center of all social relations, her influence was greater and more direct, and her person an object of greater solicitude, than in the father-age; but it must not be inferred from the mere fact of the mother-right that she held a dominant place in society. For ultimately her condition was determined by the will of man; and, notwithstanding the mother-right, she might be reduced to a servile drudge.⁵ When physical force was a deciding factor, she was by her very nature at a disadvantage. Political authority, which in primitive society is usually based on

¹ BACHOFEN, *Das Mutterrecht*.

² ECKENSTEIN, *Woman under Monasticism*.

³ RATZEL, *The History of Mankind*, Vol. I, p. 115.

⁴ DARGUN, *Studien zum Familienrecht*, Vol. I, p. 78.

⁵ *Ibid.*, pp. 76, 77.

force, would be intrusted to her only under exceptional conditions.¹ Warfare has ordinarily been confined to men, and the woman warrior has been abnormal in history. The physical inequalities between the sexes were undoubtedly less in primitive life than in the advanced stage of human development,² nevertheless they seem to be fundamental, and to have always been of sufficient importance to affect the relative position of the sexes.

In accordance with this, it is not strange that in the mother-age the maternal relatives, usually the uncle, should in a measure take the place of the husband and father. He was the protector of his sister, and the master and tutor of her children, who were also the heirs of his property, honors, and titles.³ Under such a system the rights of the mother might be very limited, and this has been fully confirmed by modern research. It has been found that among some people, whose social organization is determined by the mother-right, the mother is practically deprived of all rights. Her brother has an unlimited property right in her children, and may deprive them of liberty and life with impunity.⁴ Such are extreme cases, but they illustrate clearly that the mother-right did not always produce the same results. The other extreme was the development of the matriarchate, which placed the government into the hands of women.⁵ These extremes, however, were only incidental to the mother-age, and not an essential part of it. The preponderance of evidence indicates that, for reasons already mentioned, woman was of greater importance, and consequently had more influence, in the mother-age than in the father-age.⁶

The causes for the development of the mother-age must be sought in the conditions of primitive life. It must be remembered that man in the primitive stage is different, in his ethical nature, from man in the higher stages of civilization. The institution of the family lacks the permanency to insure the certainty of physical paternity. The bonds of affection between father and children, if not entirely absent, were not lasting.⁷ Under such conditions the mother became naturally the center of the social order; the one from whom all claims and obligations were derived.

Some writers have advanced the opinion that the mother-age was a

¹ *Ibid.*, pp. 67-71.

² HENNE AM RHYN, *Die Frauen in der Kulturgeschichte*, p. 10.

³ DARGUN, *Mutterrecht und Raubehe*, p. 9.

⁴ DARGUN, *Studien*, p. 84.

⁵ *Ibid.*, p. 142.

⁶ WILKEN, *Matriarchat*, p. 24; HENNE AM RHYN, *Die Frauen in der Kulturgeschichte*, pp. 23, 24; DARGUN, *Studien*, p. 87.

⁷ DARGUN, *Studien*, p. 66.

step in advance from a state of general promiscuity.¹ Mr. Post even suggests that, if we could obtain a clearer insight into the history of the past, we should probably be forced to the conclusion that from an ethical point of view our ancestors stood on a much lower plain than many of the lower animals of the present time.² The past will probably never be revealed sufficiently either to prove or disprove such a view. The evidence on which it is based is apparently exceptional and does not warrant a general deduction. Many cases of supposed promiscuity have been found to have had no existence.³ Without marriage, more or less lasting, society would lack the essential element of progress and would scarcely deserve the name of society. It may have been less permanent, and paterinity less certain than in our day, yet the temporary union and living together of one man and wife is essentially different from promiscuity. It contains the possibility of a progressive social life, which promiscuity pure and simple does not. There is no proof that the mother-age developed from a state of promiscuity. On the contrary, it has been found that the mother-right is usually accompanied by monogamous marriages, while polygamy prevails where it is not so generally recognized.⁴ The opinion of Westermarck agrees more nearly with the known facts:

Marriage [he says], it seems to me, is the natural form of sexual relations of man, as of his nearest allies among the lower animals. Far from being a relic of the primitive life of man, irregularity in this respect is an anomaly arising chiefly from circumstances associated with certain stages of human development.⁵

This does not mean marriages in our restricted legal sense, but the union of man and wife for a longer or shorter period in a common home. In this sense marriage may be assumed to have existed from the most primitive times of which we have any knowledge.⁶ Such a definition may not satisfy our conception of marriage,⁷ yet its fundamental difference from promiscuity, and its social significance, are obvious.

Besides the limited rights which the father possessed in respect to his own family, the close association of mother and children was one of the principal causes of the mother-right. The affection of the child

¹ BACHOFEN, *Das Mutterrecht*; WILKEN, *Matriarchat*; McLENNAN, *Studies in Ancient History*.

² *Geschlechtsgenossenschaft der Urzeit*, pp. 16, 17.

³ WESTERMARK, *Hist. of Hum. Mar.*, p. 50; RATZEL, *Hist. of Man.*, Vol. I, p. 114.

⁴ DARGUN, *Studien*, pp. 47, 61, 62.

⁵ RATZEL, *Hist. of Man.*, p. 114.

⁶ *Hist. of Hum. Mar.*, p. 70.

⁷ BRUNNER, *Rechtsgeschichte*, Vol. I, p. 80.

for the mother would develop much earlier than his affection for the father. As Mr. Bachofen has well expressed it :

The sacrifice of the son for the father demands a far higher degree of moral development than the love of the mother, that mysterious power which pervades equally all earthly creation.¹

The mother's love and care for her offspring would lead to a more intimate relationship and more lasting ties between her and the children than between the father and children. When the father was not even a member of the family, which seems to have been the rule in the mother-age, he could have very little interest in the welfare of its members. The children would look to their mother for the satisfying of their wants and the fulfillment of their hopes. While a certain degree of paternal care may also be affirmed of the primitive man, it was secondary to that of the mother and her male relatives. The care of the father for the child was probably due to self-interest, and especially economic interest, rather than to affection.² The assertion of this self-interest, however, was the beginning of a new social order, in which the father obtained definite rights in the children and control over them.

In making the love of the mother the primary cause of social development, it must not be assumed that this love was stronger in primitive life than in the more advanced stages. It was not. The tender affections are partly acquired in the process of evolution. Nor was the attachment of the children always strong or lasting. Nevertheless this love and affection formed the principal bonds of society and the basis of progress.

Some of the fossil societies of the present time furnish us with examples of how feeble and temporary the ties between parents and children may have been. Among some savage tribes of South America the parents care for their children only until they are weaned, when they are turned over to some married relative—an uncle, a cousin, or a brother. After that the children forget their parents and become attached to their guardian.³ Of some tribes in Brazil it is said that the father manifests no affection for his children and the mother scarcely more than an instinctive affection. The children of some of the people in Borneo leave their parents as soon as they are old enough to take themselves away, and subsequently they become wholly estranged from them.⁴

¹ *Das Mutterrecht*, p. x.

² STARR, *First Steps in Human Progress*, p. 235.

³ DARGUN, *Studien*, pp. 78, 79.

⁴ FELIX, *Entwicklungsgeschichte des Eigenthums*, p. 23.

These instances may be regarded as exceptional, yet they are suggestive of possible primitive conditions. As a rule, the family ties, even among the lowest savages, are more permanent;¹ and whatever the relation between parents and children may have been in the unrecorded history of the race, or now may be among some savage tribes, the preponderance of evidence points to the love of the mother for her offspring as the principal source from which have sprung those feelings of affection and sympathy that have made man a progressive social being. The mother-age illumines the dark past, and bears testimony of the divine force which impelled man to the attainment of a higher and nobler life.

The transition from the mother-age to the father-age was due to the gradual acquisition of property rights in his wife and children by the husband.² The capture or the purchase of the wife would tend to such a result. It might also be accomplished without these forms. The physical superiority of man was the primary reason. With the growth of paternal affection, the desire to have the children subject to his power and care, to make them the heirs of his property and rank, would naturally assert itself. Likewise, changes in economic conditions would give additional value to such rights and become a progressive force in undermining the mother-right. The acquisition of property rights in wife and children marked the beginning of the father-age.³ So at the present time among the people of the Gold Coast, if the husband has paid the bridal price, his power over wife and children is absolute; while, if he has not made the customary payment, his wife and children remain in the power of the maternal relatives.⁴

The transition from one age to another was a slow process. Traces of the former are found in the institutions and customs of people among whom the agnatic system has long been predominant.⁵ So, on the contrary, some cases have been observed where the mother-right is the basis of the social organization, but the wife and children are wholly in the power of the husband and father.⁶ Curious combinations of the two systems are not infrequent. Some of the Australian tribes, for example, trace their relationship exclusively through the mother, while landed property descends from father to son in accordance with strictly agnatic principles. Evidently, when land became subject to private ownership, the paternal power was sufficiently advanced to draw land within its sphere.⁷

¹ DARGUN, *Studien*, pp. 136, 137.

³ DARGUN, *Mutterrecht und Raubehe*, p. 27.

² *Ibid.*, p. 138.

⁴ DARGUN, *Studien*, p. 126.

⁵ DARGUN, *Mutterrecht*, p. 32; BRUNNER, *Rechtsgeschichte*, Vol. I, p. 82; WILKEN, *Matriarchat*.

⁶ DARGUN, *Mutterrecht*, p. 18.

⁷ DARGUN, *Studien*, p. 138.

The essential features of the mother-age thus briefly sketched will be helpful in measuring its probable influence upon the primitive social order of the Germanic people. It gave to the mother a special prominence, and at times a predominant place, in society. But, since she had to rely on man for protection, this was not a necessary consequence. In those periods of great stress, when brute force became decisive, the disadvantage of her physical weakness would make itself felt. Even under ordinary conditions she might be reduced to a servile drudge, as is amply attested by the treatment woman receives among the people whose social order is still based on the mother-right.¹ The mother-right is, therefore, not an absolute index of the condition of woman. It varies greatly in the privileges and duties which it imposes upon the female sex. The reason for this difference lies in the characteristics peculiar to each people, and it needs to be emphasized that these characteristics were, in their cause and effect, the principal forces in the development of customs and institutions, and also determined the position of woman. The mother-right was conducive to train into the race a high and lasting regard for womanhood, provided the race possessed the capacity for such training; but it did not always, as is sometimes asserted, "establish the paramount importance of woman in matters of polity and sex," nor gave to her complete independence.² The known facts do not admit such a dogmatic statement. Institutions, as well as race characteristics, are not uniform, but multiform. Environment was as effective then as it is now in producing both moral and physical inequalities. The mother-age produced conditions favorable to woman; but this, as we have seen, might mean much or little. The decisive element is always the specific people in question.

It is reasonably certain that the Germanic people have passed through this primitive stage of development. At the beginning of their historic career, however, the agnatic principle had already become a recognized factor in the organic life, but not dominant. Rights and duties were derived from the mother as well as from the father. In some relations female kinship was of greater importance than male kinship. The patriarchal family organization did clearly not form the basis of this society, as is frequently asserted.³ Besides many German writers, Sir Henry Maine has attempted to prove the prevalence of the patriarchal institution in primitive society. That this was not true of the ancient Germans will become apparent from the

¹ DARGUN, *Studien*, pp. 76-8.

² ECKENSTEIN, *Woman under Monasticism*, p. 2.

³ SCHROEDER, *D. R.*, pp. 62, 63; BRUNNER, *Rechtsgeschichte*, Vol. I, p. 82.

facts to be represented in this investigation.¹ The social system of the mother-age had been partly displaced, but its influence was still a force in the customs and institutions of the people. This influence should not be overestimated. Undoubtedly there is a tendency to attribute too much to the mother-age. It has not only been made the cause of the prominent position of woman in primitive society, but almost any kind of conduct on the part of woman in the subsequent period has been ascribed to it. So, for example, Miss Eckenstein has asserted that not only in polity and sex woman was of paramount importance during the mother-age; but that, at the time when the Germanic people came in contact with Christianity, the reminiscences of her former independence were still so fresh that they "made many women loth to conform to life inside the family as wives and mothers under conditions formulated by men."² That Christianity, in the form in which it was brought to the Germans, was hostile to the ideals of womanhood may be readily admitted, but that the family bonds were still so objectionable that many women preferred a monastic life, is an unwarranted conclusion. It takes for granted an independence and freedom in the immediate past which certainly had not existed. The power of the father and husband is so fully recognized in the earliest accounts of the Germans, as well as in their laws, that it must be regarded as a permanently established and generally accepted power, and not as a power to which women had been but recently forced to submit. The reminiscences of a lost independence were not the cause which induced so many women to enter the monasteries in the Middle Ages. They were far different and well-known causes. The disorganized state of society, the insecurity of property, of life, and of honor—in brief, the difficulty of living—these, together with the peculiar religious views of the time, were the causes which led many women to choose the monastic life. The spirit of independence probably determined the choice of some, but this class is present in every age and peculiar to none. If women took refuge in the monasteries to escape from the tyranny of men, it may well be asked why men entered them in still greater numbers. Was it a dread of the possible return of the mother-age? But this is not all. We are assured with equal authority that the throngs of women which accompanied the mediæval armies were actuated by the same reminiscences of lost independence.³ By this process of

¹ F. McLENNAN, in *The Patriarchal Theory*, has adduced ample proof to show that it was exceptional rather than universal.

² *Women under Monasticism*, p. 3.

³ ECKENSTEIN, p. 4.

reasoning there is very little that cannot be attributed to the reminiscences of her independence in the mother-age. The large number of women who became camp-followers during the Thirty Years' War must have been impelled by these same reminiscences, and may the mother-age not be held responsible for that increasing number which in our own day is a menace to the home and to society? Unfortunately for such a process of reasoning, the causes in each instance are too well known. Noble ideals and sordid motives, as well as brute passion and high ambition, influence the action of men and women; but the great motive force is more often found in the immediate and commonplace problem of life. To live, according to the individual's notion of living, along the line of least resistance determines the trend of human action. It was so in the Middle Ages. Men and women entered the monasteries because they offered to them the means of life; to some the highest ideal of living, to others an independent life, and again to others a safe retreat or a mere subsistence.

Far-reaching as the mother-age may have been in its influence, neither monasticism nor any other anti-social movement can be ascribed to it. There is no proof that any large number entered the monasteries to avoid marriage, and when they did renounce marriage, it was to escape from an evil, or to sacrifice the pleasures of this life for the blessings of the future life. In that age of anarchy and insecurity married life certainly had advantages, but frequently not the advantages of the monasteries. It was the hopeless condition of society or an intense religious conviction, and not the hardship of family life, which prompted people to withdraw from the world.

Their ideal of womanhood, by which the Germans distinguished themselves from the half-oriental Greeks, and in a certain sense from the Romans,¹ was the result of a long development. All its formative causes we may never be able to divine. It was evidently founded in the religious belief of the people, a belief in woman's insight into the mysteries of life and in her power to interpret the future. It was this that gave to her such a prominent place in the early historic period, and preserved for her a highly honored position and remarkable influence when the mother-right was displaced by the father-right. "They believed them to possess somewhat of the divine and of prophecy," is the manifest reason, so clearly expressed that it cannot be mistaken. This quality was believed to be possessed by women as a class, and by some to such a marked degree that their position became a commanding one and their authority almost divine.

¹ DAHN, *Urgeschichte*, Vol. I, p. 37.

What has been said is fully corroborated by historical evidence. In the earliest account of the Germanic people, women officiating as priestesses are mentioned.¹ They sacrificed some of the captives, and prophesied from their blood in the sacrificial caldron.² The question whether the Germans had priestesses is still unsettled. Usually men seem to have held this office.³ Women, however, declared the divine will in times of distress and doubt. Battles were delayed or fought in accordance with their will, as determined by means of the lot or prophecy.⁴ Tacitus mentions several instances in which individual women gained complete political sway because of this supposed divine inspiration. The maid Velleda obtained such an ascendancy among the Germans during the revolt under Civiles, 70 A. D., that for several years her word was law; and, although she seems to have had no legal standing, her authority was unquestioned. In order to maintain the reverence for her mysterious power, she remained concealed in a tower, where she received messages and sent orders to direct the affairs of the people.⁵ In 84 A. D. we meet with another woman who had gained such prominence that she was sent on an important mission to Domitian. Her influence, like that of Velleda, came from the belief in her divine inspiration.⁶ A remarkable occurrence is related by Tacitus illustrating to what extent women controlled political affairs. When the Celts, neighbors of the Germans, were deliberating whether they should choose the Germans or Romans for their allies, they concluded that it would be more honorable to submit to the princes of Rome than to the rule of the German women.⁷ In all these instances she had no other basis for her authority than her supposed knowledge of the mysteries of life. Men were the rulers, according to law; but the influence of these women superseded, for the time being, all constituted authority and gave them complete sway. It is not a question of mother-right or father-right. Her power was not based on any legal arrangement, but was found in the religious ideas of the people. She was endowed with that mysterious and awe-inspiring power so potent in subjecting the human will, especially in the childhood of the race. Bachofen fully recognized this power in primitive life, and made it the basis of his theory of the mother-right. While his conclusions are not accepted in full, there is much truth in his statement of the religious influence of women. He says:

¹ STRABO, VII, 3.

² GRIMM, *Teutonic Mythology*, Vol. I, pp. 96, 97.

³ TAC., *Germ.*, c. 7, c. 11; *Ann.*, I, c. 57.

⁴ CAE., *B. G.*, c. 50; DIO CASSIUS, *R. H.*, c. 48.

⁵ TAC., *Ann.*, IV, c. 61, c. 65; V, c. 22, c. 24.

⁶ DIO CASSIUS, *R. H.*, c. 48.

⁷ TAC., *Ann.*, V, c. 25.

The law of nature has delivered the scepter of power to the strong. If it is wrested from him by weaker hands, other sides of human nature must have been active, more fundamental forces must have made their influence effective. The aid of ancient testimony is not necessary in order to recognize that power which has gained this victory. By means of directing her mind upon the supernatural, the divine, upon that which does not conform to any law, woman has ever exerted a powerful influence over the male sex and the development and the civilization of the race.¹

Wherever woman has had this religious influence she has held a prominent place in society, and this influence was greater in primitive society than in the more advanced stages of civilization.

These religious notions were a natural result of the relations in which the mother stood to her children. When the father was almost a stranger to the mother's family, the children were wholly depending on her for all their necessities. From her they received instruction in things human and divine; and in all the perplexing problems of life they relied on her for advice and counsel. To them there was no higher authority to explain the mysteries of life, to interpret the will of the gods, and consequently she herself was looked upon as possessing somewhat of the divine.

The conditions which enabled woman to hold a leading place in the social order were essentially primitive, and any change in these conditions would affect her influence. A more permanent relation between father and children, or the introduction of a new religion, would cause its decline. Among the Germans the former had taken place in the pre-historic age, and with the advent of Christianity woman lost the controlling power derived from the ancient religion. From a being who "possessed somewhat of the divine" she came to be regarded by the representative men of the church as impure and one to be tolerated only as a necessary evil. It was partly due to the training of the mother-age, and perhaps more to the original qualities of the Germanic people, that their social life was not completely dwarfed by this immoral doctrine.

¹ BACHOFEN, *Das Mutterrecht*, pp. xiii, xiv.

CHAPTER II.

THE SOCIAL CONCEPT OF WOMAN.

IN the preceding chapter I have pointed out the probable causes of the prominence of woman in primitive society. They were mainly two: the affection of her children and the belief that she was favored by the gods. The latter may be regarded as a result of the former, but at the same time more powerful and enduring. Her supposed knowledge of things divine placed the destiny of the tribe in her hands, and at times made her control unlimited. Peace and war, rebellion and submission, were left to her decision. Especially would this be true during the stress and excitement of an impending crisis, which has ever impelled man to surrender himself wholly to the guidance of the divine will; and, remembering the terrors which beset primitive life on every hand, we can form some estimate of the influence of woman. In the tradition and early history of the Germanic people, we have many illustrations of this fact, and of the prominent place it gave to woman. While not always accurate as to facts, we may obtain from them a fairly reliable representation of the social concept of woman, of those characteristics which impressed themselves permanently upon the memory of the people.

In the oldest historic accounts of the Germanic women they are described, not only as interpreters of the divine will, but as fierce and warlike. In connection with the Cimbric and Teutonic invasions, in the latter part of the second century B. C., it is related that, when one of their armies was defeated, the women in a fury of wrath threw themselves upon the pursued friends as well as the pursuing enemies; that they killed their own husbands, fathers, and brothers; that they destroyed their own children by throwing them under the wheels of the carts and the feet of the animals; and that finally they took their own lives.¹ A similar story is related by Valerius Maximus in a collection of anecdotes. He expresses the belief that, if the German warriors were endowed with the courage of their women, Rome would have cause to fear for her victories.²

Neither of the accounts presents woman as taking an active part in battle. Only when driven to despair, when captivity and a life of

¹ PLUTARCH, *Life of Marius*, c. 19.

² *Urgeschichte*, Vol. I, p. 12.

slavery and shame was threatening them, did they yield to this fierce and brutal violence in punishing the cowardice of their men, and in defending their lives against their merciless victors. They were animated by the spirit of the historic Spartan mother, and of Lucretia the Roman maid. Trained to freedom in the hardships and dangers of the Germanic forests, they spurned servility and loathed cowardice and a life of dishonor.

The subsequent history does not contain any evidence of such pitiless rage, but examples of courage and daring are not infrequent. Tradition would lead us to infer that women, or at least some women, took part in war. The memory of woman warriors and female military organizations has been preserved in mythology and legend. Many names of ancient origin denote the warlike attributes of women.¹ The circumstances which gave rise to these names are not known, and to what an extent woman engaged in warfare remains an unsettled problem. As far as can be learned from authentic history, military duty has ordinarily been performed by men, and these memories of the obscure past may refer to exceptional institutions, such as in our time exist among the Dahomians in Africa, where a part of the army is composed of women devoted to celibacy.

History furnishes us with no reliable proof that the Germanic women ever constituted a part of the actual fighting forces. A story related by Jordanus to that effect is too fanciful and too absurd to be taken seriously.² Evidently, in the historic period, woman's influence did not rest upon the emulation of masculine characteristics, but upon her womanly virtues. She did not battle with man for superiority, but held an honored place maintained by man. The thought of her captivity incited men to heroic deeds, which turned defeat into victories. Man fought to protect her and also to gain her approval.³ To them her praise was the greatest honor and her reproach the greatest disgrace. She was the judge to honor the brave and censure the cowards.⁴

In this solicitude of the men for the safety of their women we have the clearest expression of the social concept of womanhood. She was not with man on a level of brute force, but one who was to be protected and whose influence controlled the conduct of man. That this influence was a reality is fully borne out by the fact that the leaders of the war-hosts turned it to account on many battlefields. The women are repeatedly found near the lines of battle, where they were placed

¹ SCHERER, *Hist. of Germ. Lit.*, Vol. I, pp. 8, 9.

³ PROCOPIUS, *B. V.*, II, c. 2, c. 30; IV, c. 18.

² *B. Goth.*, c. 7.

⁴ TAC., *Germ.*, c. 7.

upon carts and wagons to witness the conflict, so that the men fighting in their presence would ever be mindful of the dangers to which their women would be exposed by a defeat, and of the scorn which an act of faintheartedness would bring upon themselves. Woman held the place of honor. An inspiration in war, in peace she formed the most sacred bond of friendship, and in counsel her advice was decisive.¹

Holding such a place in society, woman was able to render great services in church and state. During the early centuries of the Middle Ages she plays a prominent part in society, and frequently assumes a leading share in the government. While the records are mainly confined to the achievements of queens and princesses, it can scarcely be doubted that women in the humbler walks of life exerted a similar influence within their more limited spheres. In introducing and extending the Christian religion among the Germanic people, some of the queens were more successful than the missionaries of Rome. Clovis, the king of the Franks, was persuaded by his wife, a Burgundian princess, to accept Christianity; and with him the nation of the Franks was gained over to the new religion.² Bertha, a princess of the Frankish royal house, carried Christianity to England, and, by preparing the way for St. Augustine, was instrumental in the conversion of king Ethelberth and his people.³ The Lombards were converted to Catholicism through the influence of their queen Theudelinda.⁴

Tradition and history assure us that she was not less influential in the secular affairs of the state. The policy of a people was frequently determined by her decision. During the minority of the king the queen-mother administered the government, and, when necessary, placed herself at the head of the army to repel an invasion or punish an enemy.⁵ Not less significant was the influence of the queen during the life of the king. She shared with him the honors of his office, she was crowned with him, and participated in all public functions.⁶ Treaties and grants were made with her consent; and, to give validity to royal acts, her signature was added to that of the king. Besides

¹ CAE., *B. G.*, I, c. 51; TAC., *Ann.*, IV, c. 79; *Germ.*, c. 8.

² GREG., *TUR.*, II, c. 30; FREDEGAR, c. 21.

³ BEDE, *Ecc. Hist.*, I, c. 25.

⁴ PAULUS DIACONUS, *Hist. Lang.*, IV, c. 7.

⁵ *Sagen aus der Chronik der Frankenkönige*, c. 36, c. 37, c. 38; *Gesta Francorum*, II, c. 47, c. 51; FREDEGAR, *Chronik*, c. 79, c. 88; *Fortsetzung*, c. 8; *Vita St. Columba*, c. 18; PROCOPIUS, *B. Goth.*, I, c. 2; JORDANUS, *Hist. Rom.*, c. 367, c. 368; *Hist. Goth.*, c. 59; *ETHELWERT'S Chronicle*, 672 A. D.

⁶ In ASSER'S *Life of King Aelfred* we find an exception to this rule. In Wessex the queen was not permitted to share in the royal honors, nor was she called queen, but the king's wife. Asser himself speaks of it as an exception, contrary to all the customs of the Germanic nations, and stigmatizes it as "perverse and detestable."

the queen, the sisters and daughters of the king signed important documents of state.¹ Every function of government was at different times performed by women. Neither the civil nor the military administration lay outside of her sphere of activity or beyond her ability. Enemies were conquered and held in subjection. She captured and destroyed the castles of foes, and built them for the defense of her own people.²

The spirit of independence and self-assertion, just noted, was not limited to a privileged class, but possessed by women of inferior rank. The royal families were governed in the relations of their members by the same customs which governed the family of the common freeman. In one family as well as in the other women had rights and also responsibilities. The interest of one member of the family involved the interests of all; and every important act required the consent of all. Ability was the measure of responsibility. Whether man or woman, the one most capable assumed the most difficult part in maintaining the family and discharging its obligations.

In the earlier period, under purely democratic institutions, it is probable that any woman might rise to a position of commanding influence. With the gradual change in the political life of the people, with the growth of royal power and of class distinction, the places of prominence were filled by those of princely birth. However, their sway could never have been so complete, if the wishes and authority of women had not been respected by all classes of people. The Germans had not yet accepted the principles of the Roman law by which women were excluded from all civil and political offices, nor the Jewish doctrines by which woman was made subordinate to man's glory. While she was dependent on man in some respects, in many she was his equal or his superior, a being to whose judgment and wishes he yielded.

A characteristic illustration of woman's influence in the family is furnished by Procopius in his history of the Gothic wars. During the reign of Theodoric, the Ostrogoths and Visigoths were united for a time under one government. This political union had resulted in many intermarriages between them. When the political bonds were again severed, the problem arose as to the allegiance of the mixed families. In accordance with strictly agnatic principles, it would have been decided by the nationality of the men. But apparently this

¹ FREDEGAR, *Chronik*, c. 7; *Fortsetzung*, c. 33; GREG. TUR., III, c. 5; IX, c. 1, c. 11, c. 16; PAULUS-DIACONUS, *Hist. Lang.*, I, c. 3; II, c. 31; IV, c. 7; *Chron. Sax.*, 657 A. D.

² *Chron. Sax.*, A. D. 721, 784, 913, 916, 919; FREDEGAR, *Chron.*, c. 17.

was not the method by which the Germans settled such questions. Procopius tells us that the decision in each case was left to the husband. He might join his own nation or the nation of his wife, as preference might dictate. In the division there were as many of those who chose the latter as of those who remained with their own people.¹ It is probable that, according to custom, the husband had not an absolute freedom of choice, but was bound to respect the wishes of the wife as well as of other members of the family. The custom of the royal families, of making important acts dependent on the consent of all its members, must also have been common to the lower classes. At any rate, the story shows that the wives, either by their right or their influence, had an equal share with their husbands in deciding their future allegiance. The all-important fact is that she had a voice in determining her own future, and that her opinion was often decisive in family affairs.

The recognition of her social worth, the enjoyment of the rights and privileges which enabled her to be an effective social force, mark the attractive, the bright side of her life. There is another side, less pleasing, dark, and at times revolting. Primitive life at best is a life on hard terms. Mere existence is obtained only at the cost of a perpetual struggle. Property and life alike have but scant security. The misery of excess and privation is intensified by war and rapine. Barbarism grants no immunities, and woman is not exempted from its misfortunes. In war she was the legitimate spoil of the conqueror.² She might be forced to accept the hand of a victor, even though that hand had destroyed her people and was stained with the life-blood of her nearest kin.³ In the power of an enemy she had no rights, and sympathy rarely intervened to obtain for her generous treatment. She might be slain, enslaved, or violated with impunity.⁴ She had no remedy and no law to protect her. In time of peace, too, her life and honor were frequently endangered by lawless rulers and ruffian warriors.⁵

Much of the brutal treatment of woman was a result of the great migration. The disorganization of government and of society gave free reign to the brute in man. Some of these stories are no doubt overdrawn. Prejudice has magnified and credulity exaggerated them.

¹ *B. Goth.*, I, c. 13.

² *Vita St. Gallus*, c. 42; *Vita St. Bonifacius*, c. 8. PROCOPIUS, *B. V.*, II, c. 4; III, c. 1; GREG. TUR., V, c. 6; *Hist. Lang.*, III, c. 8.

³ *Hist. Lang.*, I, c. 27.

⁴ PROCOPIUS, *B. Goth.*, II, c. 25; IV, c. 33; GREG. TUR., III, c. 7; IV, c. 20.

⁵ JORDANUS, *Hist. Goth.*, c. 24; GREG. TUR., III, c. 10; IV, c. 13, c. 20; FREDEGAR, *Chron.*, c. 82.

But, after making due allowance for this, the evidence is sufficient to prove the inhumanity of man in his conduct toward woman. The Germans were barbarians, and the usages of war were barbarous. It is the more significant when the historians assure us that the Germans were more humane than the civilized Romans, whose brutal passions recognized no restraints in regard to a conquered foe.¹ The moderation of some of the Germanic leaders was exceptional to that age. They restrained their victorious armies from violence and rapine and dealt with a conquered enemy, and especially women, in a spirit of generosity foreign to the Roman. Totila, the king of the Goths, extended to woman every possible protection;² and the sack of Rome under Aleric may be cited as an instance where the barbaric Germans rose superior to the inhuman practice of Rome and the brutal violence of a more enlightened age.³ Whenever the true inwardness of the Germanic character comes to the surface, we meet with a deference and regard for womanhood which make it certain that the abuse of woman was repugnant to the deep social sense of the people.

It must be conceded that not all the conditions of a woman's life were favorable, but that was principally a consequence of primitive life itself. In periods of general distress her lot was a wretched one. Ordinarily, however, when the social order ran its accustomed course, she commanded respect and was protected against violence. Her independence and self-assertion, so striking in contrast with the slavish subordination of women elsewhere, is ample proof that she was neither servile nor inferior to man. On the contrary, her influence over man was so generally recognized that his acts, both good and bad, were frequently ascribed to it.⁴

This brief statement suffices for a general view of the status of woman among the ancient Germans. The social ideal of woman, as expressed in the preceding facts, was remarkable for that primitive stage of civilization. It assigned to woman a place which was essential to a healthful social state and made the highest civilization possible. This conception, this ideal of womanhood, fixed itself permanently in the national consciousness, and has ever remained the most precious possession of the German race. After the struggle with adverse tendencies during the Middle Ages it has again become the vitalizing force of our modern civilization.

¹ PROCOPIUS, *B. V.*, II, c. 4; TAC., *Ann.*, I, c. 51.

² PROCOPIUS, *B. Goth.*, III, c. 8, c. 21.

³ GIBBON, *Decline and Fall of Rome*, chap. 31.

⁴ *Das Leben d. h. Severin*, c. 8; GREG. TUR., I, c. 32; V, c. 38; VIII, c. 39; FREDEGAR, c. 59; *Chron.*, c. 18, c. 24, c. 28, c. 29, c. 42; ASSER, *Life of King Aelfred*.

CHAPTER III.

THE SOCIAL ESTIMATE OF WOMAN.

AN estimate of the comparative weight of the factors which control and determine the social organization is expressed by every people in its laws and customs. Some institutions are more rigorously protected by laws than others, because they are felt to be more essential. So also certain individuals and certain social classes are favored by laws, because they are believed to be important in the conservation of society. In the Middle Ages the church held a prominent place; it was a dominant institution, and, therefore, carefully hedged about by laws. Its rights and privileges were many, and any interference with them was severely punished. Kings and the servants of the state have always enjoyed a greater consideration in the laws than other classes. The serf and slave were devoid of nearly all, if not of all, legal protection.

This is common knowledge, self-evident as it were, but nevertheless important. It affords an insight into the social life of a people, and discloses the relative condition of the various classes with a clearness which can scarcely be obtained from other sources.

The *Leges Barbarorum* and the Anglo-Saxon laws are the oldest written laws of the Germanic people. Some of them are very limited in their scope, and the best have the incompleteness of a primitive code. They were undoubtedly supplemented by customs which had the force of law, but were so generally known that it was needless to embody them in the written code. The customs have been lost to us, except so far as they have been recorded in the scant literature of the time. Though deficient in many respects, and by no means explicit in defining the status of woman, yet from these laws and from what may be gleaned from other sources we may obtain an approximately correct idea of the social estimate of woman.

In conformity with the life of the people, the laws were simple, and provide a ready means for determining the comparative values of persons and things. By the system of composition every injury had a definite money fine. From murder and homicide down to the stealing of a pig or the injuring of a dog, a graduated scale of money penalties was provided. The money was paid either to the person who suffered or his relatives, or both; or part of it might be paid to the

state. These provisions of the law furnish a standard by means of which the social values which the ancient Germanic people placed upon individuals can be easily determined. With the exception of capital punishment for certain grave crimes, all the laws have this feature in common.

A few examples taken from the earliest Anglo-Saxon laws will serve as an illustration of what has been said. A person's four front teeth are estimated at six shillings each, each of the next at four, the next at three, and the rest at one shilling each.¹ Then again the thumb is estimated at twenty shillings, the thumb nail at three, the index finger at eight, the middle finger at four, the ring finger at six, and the little finger at eleven shillings.²

Such was the indemnification which had to be paid for being instrumental in depriving someone else of any of his teeth or fingers. And so, for the injury to any part of the body, or to a person's reputation or honor, there was a fixed money penalty.

As is apparent from the above examples, the amount of the penalty was determined by the usefulness of the different members. The thumb and the little finger were valued much higher than the rest, while the middle finger had the lowest value, obviously because it was of least use. In respect to the teeth, the effect upon personal appearance would be a consideration, but the front teeth are also of greater service to the barbarian than to the more civilized man.

Such a graded scale of compensation of all useful things and qualities which man possessed indicates clearly the social estimate of them. The element of punishment which may have entered into the compensation does not alter the relative values of the objects in question. From the preceding examples it is reasonable to infer that the thumb was regarded five times as useful as the middle finger, and in the same manner the relative value of anything for which the laws provide a penalty may be established. Likewise the social value of men and women can be derived from the detailed system of money fines for all offenses and crimes committed against either sex.

To estimate the value of men and women in terms of money may be repulsive to our ethical feelings; however, it is not entirely foreign to modern ideas of justice. Railroad companies settle in a similar way for injuries received by employes or by patrons, and attacks upon the person or reputation of an individual are frequently punished by awarding a sum of money to the injured. But there were special reasons why the ancient Germans adopted such a system.

¹ AETHB., c. 51

² *Ibid.*, c. 54.

Private revenge had, no doubt, been the general rule in their earlier history and, as is well known, was often resorted to during the Middle Ages. As long as there was no central organization, and each clan or family, in the more comprehensive sense, was compelled to make provisions for its own protection, private revenge was a common practice. The system of composition was a step in advance. It provided a basis of settlement without having recourse to force. It sought to eliminate the greatest cause of disorder, and of the destruction of life and property. To accomplish this end they did not purpose to give specific values to human beings, or to calculate how many dollars and cents would indemnify an individual, but to find the proper mean, and fix upon such compensation as would, in the majority of cases, satisfy both parties—a sum sufficiently large to be accepted by the injured, and not larger than the offender was willing and ordinarily able to pay. In a sense it was a reparation for damages either to the injured person or his friends, but that was not the primary and determining motive. However, this does not in the least invalidate the statement that an estimate can be made from this system of fines, showing the comparative values of different classes of persons. The penalty in each case denotes the weight and worth of the individual in the public estimate. Reverence for office, political expediency, or superstition may have been an element in its determination; yet the basis of all was to satisfy the organizing genius of the people, to preserve and protect what was felt to be most essential in the life of organized society.

The basis on which the money penalties were computed in cases of grave crimes was the simple *wergeld*,¹ the "man-price," a sum of money paid in case of ordinary homicide by the slayer to the relatives of the slain. The amount to be paid in each case was a fraction or multiple of this sum, in accordance either with the circumstances under which the crime was committed or the persons involved.

While the system of *wergeld* was common to all the Germanic peoples, the amount of the *wergeld* varied. This was partly on account of the difference in the economic condition, the value of money, and the state of civilization when the laws were enacted; and partly due to the difference in the legal and ethical conceptions of the people. It will be necessary, therefore, to examine the laws separately, in order to

¹ The term "*wergeld*," derived from *vir*, "man," and *geld*, "money," is variously spelled in the sources. *Wiregildium*, *wirgildum*, *wirigeld*, *wergildus*, *weregeld* are some of the more common forms. (GRIMM, *R. A.*, pp. 650, 651.) It was also called *leudis* or Ags. *leód*, *leóðgeld*, and *were*. (BRUNNER, *D. R.*, p. 86; SCHMID, *Gesetze der Angelsachsen*, p. 675.)

arrive at an accurate comparison of the wergeld for both sexes, and thus obtain the data for a general summary.

According to the Salic law, the simple wergeld for a free Frank, or barbarian, or a man who lived under the Salic law, was 200 sol.,¹ and for a free maiden the wergeld was the same.² If either was slain, the homicide paid the sum to the relatives of the one slain. Some multiple of this sum was imposed, either because of the aggravated form of the crime or because of the rank or sex of the slain. So, if the slain person was thrown into a pit or into the water, the penalty was three times the wergeld, 600 sol.;³ and for the most obnoxious form of murder, nine times the wergeld, 1,800 sol.⁴ Then, the law discriminated between the persons slain. One in public service, *in trustee dominica*, had his wergeld tripled.⁵ A Roman who was a companion to the king, *convivia regis*, had a wergeld of only 45 sol.⁶ A boy under twelve years had a wergeld of 600 sol.⁷ Further, the place where a man was slain was an element in determining the penalty. If a man was assailed in his house by a band and slain, the penalty was 600 sol.,⁸ and if this was a man *in trustee dominica*, it was 1,800 sol., *i. e.*, three times the wergeld of the common freeman.⁹ Some variations from the foregoing are found in the laws¹⁰ and in different texts. The reason for these variations is not always clear, but the time when the laws were enacted and the mistakes of copyists are probably in part responsible for them. The figures given illustrate the general principle on which the penalties were imposed, and serve for a comparison.

Comparing the wergeld of woman with these sums, we find that up to the age of twelve woman had no advantage over man,¹¹ but from her twelfth to her sixtieth year she had a triple wergeld, and for the remainder of her life only the simple wergeld, 200 sol.¹² This amount varied if the woman were pregnant. In accordance with the law already stated, if the unborn child was proved to be a boy, besides the 600 sol. paid in satisfaction for the mother, another 600 sol. had to be paid for the child. The laws on this point, however, are so much at variance that it is nearly impossible to arrive at any satisfactory conclusion. In two texts the provisions in respect to slaying a pregnant woman impose a penalty of 700 sol.,¹³ while another text has 800 sol.,¹⁴ and still another only 300 sol.¹⁵ In each one the child enters

¹ *L. Sal.*, tit. 44.1. Sol.=solidus or solidi.

² *Ibid.*, tit. 44.14; tit. 28.9; tit. 75.2.

³ *Ibid.*, tit. 44.2.

⁷ *Ibid.*, tit. 28.1.

⁴ *Ibid.*, tit. 44.5.

⁸ *Ibid.*, tit. 45.1.

⁵ *Ibid.*, tit. 44.4.

⁹ *Ibid.*, tit. 45.2.

⁶ *Ibid.*, tit. 44.7.

¹⁰ *Ibid.*, tit. 64.

¹¹ *Ibid.*, tit. 75.2.

¹² *Ibid.*, 75.2, 3, 4.

¹³ *Ibid.*, *HER.*, tit. 28.4; *LIND.*, tit. 26.4.

¹⁴ *ECC.*, tit. 30.3.

¹⁵ *SCHILT.*, tit. 24.3.

into the composition, and without implying a difference in sex, the child is estimated at 100 sol. in three texts, and 200 sol. in the other. For the text in which the whole amount is only 300 sol., the wergeld of the mother is presumably 200 sol. A similar perplexity is met with in the provisions relating to unborn children, or those killed before they had lived "eight nights." Three texts provide a punishment of 100 sol.,¹ and another text 200 sol.² There is no distinction made between the sexes, and it must be supposed that the intent of the law was to make no distinction in favor of either. In so far as a general conclusion may be drawn from these provisions of the Salic law, giving an estimate of the relative protection accorded by the social organization to the two sexes, it is that during childhood the comparative values varied. One of the texts assigns to boys a triple wergeld, and to girls a simple wergeld.³ The other texts make no discrimination, up to the age or twelve, in favor of either sex; and in accordance with the above statement (*cf.* p. 33) woman had a triple wergeld from her twelfth to her sixtieth year, and for the rest of her life a simple wergeld. The wergeld of the freeman remained the same throughout life. The legal protection extended to both sexes was therefore the same with these two important exceptions: a boy, according to some provisions, had a higher wergeld than the girl of the same age; other provisions make no distinction;⁴ and from twelve to sixty years of age woman enjoyed the greater protection. If the husband was slain, 200 sol. was all the satisfaction the law required, while, if the mother was slain, it was three times this amount. Woman, for the greater period of her life, was placed on an equal basis with public officials. In one text she was placed in the same class. *Si antruscionem vel femene tale ordinis interficiat, aut tale rem voluerit vel igne conarimaviret* IDCCCC *dinarius componat*.⁵ No reference is made here to the age of women, but they are designated as a class.

The social motives for this higher wergeld for woman, during the period of her greatest usefulness, may have been various. But a recognition of the paramount importance of the mother within the family was undoubtedly one of the main reasons for this favorable estimate of her social worth. This was evidently not the only reason. The laws made no distinction between married and unmarried women. Some of the provisions which do not designate a definite age grant

¹ ECC., tit. 24.4; SCHILT., tit. 30.3; LIND., tit. 26.5.

² HAR., tit. 28.5.

³ It should be noted here that the time during which woman received the higher wergeld is mentioned in only one provision; it is usually referred to as the time in which she bears children.

⁴ ECC., tit. 74.5.

⁵ ECC., tit. 72; HAR., tit. 74.2.

her the higher wergeld from the time of maturity, and thereby show that the idea of motherhood determined, partly at least, the purpose of the law. But it is not necessarily the primary reason. The high regard in which women, as a class, were held in the early period, for partly different reasons, found likewise expression in these laws. Such a supposition finds a strong support in some of the Germanic laws which conceded to woman a higher wergeld, not only through life, but even extended to her a higher protection in the grave.

Several other provisions indicate the social importance of the different sexes during childhood. The penalty for depriving a boy of his locks, without the consent of the parents, was, according to two texts, 62½ sol.;¹ in two other texts, only 45 sol.² The offense against a girl was punished by a payment of 62 sol. in one text,³ and 45 sol. in three texts.⁴ As far as the laws were concerned, there was practically no distinction in the penalties for the offense committed against either.

When the safety of woman was easily endangered, as during a journey on a public highway, an offense against her was most severely punished. For molesting a freeman on the highway the punishment was 15 sol., while for the same offense against a woman it was 45 sol.⁵ The Lombard law was still more favorable to women, imposing a penalty of 900 sol. if this offense was committed against a free woman, and only 20 sol. if a man was the injured person.⁶ These legal rules had in view the defenselessness of woman, and the greater dangers to which she was necessarily exposed when she passed beyond the safeguards of the home and the family—a natural and rational protection which the healthy instinct or the simple common-sense of our forefathers provided, but which a later age, under the influence of foreign ideas, abandoned.

The laws of the Riparian Franks are, with a slight variation, the same as those of the Salic Franks. The wergeld of a freeman was 200 sol.;⁷ of anyone *in truste regia*, 600 sol.⁸ It was the same for a count,⁹ or anyone *in hoste*;¹⁰ a servant of the king, 100 sol.,¹¹ and of the church, 100 sol.¹² If any attempt was made to conceal the body of the murdered man, the simple wergeld was tripled.¹³ The wergeld of woman up to

¹ HAR., tit. 28.2; SCHILT., tit. 34.2.

² LIND., tit. 26.2; ECC., tit. 30.5.

³ *Ibid.*, tit. 26.3.

⁴ HAR., tit. 28.6; ECC., tit. 30.6; SCHILT., tit. 34.2.

⁵ HAR., tit. 34.1, 2; LIND., tit. 33.1, 2; ECC., tit. 33.1, 2; SCHILT., tit. 49.1, 2.

⁶ *Ed. Roth.*, 24, 25.

⁸ *Ibid.*, tit. 11.1.

¹⁰ *Ibid.*, tit. 63.

¹² *Ibid.*, tit. 10.1.

⁷ *L. Ripu.*, tit. 7.

⁹ *Ibid.*, tit. 53.1.

¹¹ *Ibid.*, tit. 9.

¹³ *Ibid.*, tit. 15.

the time of maturity was 200 sol.;¹ from maturity to the age of forty, 600 sol.,² and for the rest of life, 200 sol.³ If the woman was a servant of the king or the church, and bearing children, the wergeld was only 300 sol. If a free woman was pregnant, an additional 100 sol. was added for the child, making 700 sol., and if the child was killed before birth or before it was named, *i. e.*, before it was eight days old, the penalty was 100 sol.⁴ The wergeld of man and woman differed only during the period of childbearing, when woman enjoyed the highest protection, being placed on an equal with those *in truste regia*. It seems that in respect to other crimes no distinction was made. If anyone sold a freeman and was not able to return him, the penalty was 600 sol.; if he did return him, 200 sol.; and the law goes on to say: *Quod et de femina ingenua similiter convenit observare*.⁵ Likewise woman was punished the same as man for malfeasance.⁶ The special feature of the law to be noted is the limitation of the time in which woman was the recipient of the highest legal protection. Instead of being from the time of maturity to sixty years of age, as in the Salic law, it was limited to forty years. The law does not seem to recognize the importance of the mother as such, her significance in the home, but merely her usefulness from the social point of view, which is greatest during those years. The same idea seems to underlie the Visigothic law, which assigned to woman the highest wergeld from her fifteenth to her fiftieth year.⁷

A different principle is found in the Alamanian and Bavarian laws. Woman as such was favored by the laws as compared with man, and so consistently that it began even before birth and extended beyond life. Leaving out of consideration the various penalties fixed for offenses against the nobility, church dignitaries, and their dependents, we find that the wergeld for the lowest class of freeman was 160 sol. If the slain person left no children or heirs, 200 sol. For the freeman of the higher class it was 200 sol. Woman had in every case a double wergeld.⁸ If a freeman was murdered, *i. e.*, killed under aggravating circumstances, nine times the simple wergeld was demanded in the composition; but, if it was a woman, eighteen times the simple wergeld.⁹ Should anyone sell a freeman, the penalty was 60 sol. if he restored

¹ *L. Ripu.*, tit. 18. ² *Ibid.*, tit. 11.1. ³ *Ibid.*, tit. 14.1. ⁴ *Ibid.*, tit. 36.10. ⁵ *Ibid.*, tit. 16.

⁶ *Si quis vir seu qua mulier Ripuaria per venenum semper aliquod malificium aliquem perdiderit, wergeldum componat.* (*L. Ripu.*, tit. 83.)

⁷ *L. Wisi.*, Lib. VIII, tit. 4.16.

⁸ *L. Alam.*, tit. 68.1, 2, 3, 4.

⁹ *Ibid.*, tit. 49.1, 2.

him to his liberty, but 160 sol. if he was not able to do so; and 200 sol. if the man sold left no heirs.¹ However, if it was a woman, the penalty in the former case was 80 sol., and in the latter 400 sol.² Again, if anyone disturbed the grave of a freeman, the penalty was 40 sol., but if it was the grave of a free woman, 80 sol.³ Another law provided that anyone who caused the death of an unborn child should pay 12 sol. in composition if it was a male, and 24 sol. if it was a female.⁴ In the composition of other crimes, women, regardless of age, were estimated at twice the value of men.⁵ There is one exception to this general statement, or rather a contradiction, in the laws. One provision relating to murder fixed the penalty at nine wergelds for man and eighteen for woman,⁶ while another placed it for both alike at nine wergelds.⁷ The latter is not consistent with the laws as a whole, and cannot be regarded as a valid legal provision existing at the time when the other laws were in force.

Although a crime against woman was punished more severely than a crime against man, if she herself became guilty of an offense she was punished the same as man. If anyone was murdered by man or woman, *baro aut femina*, he was to be absolved with nine wergelds.⁸

The greater relative protection was extended to woman throughout life, and even beyond it. Her greater social value during motherhood does not appear to have been an element in determining the laws. Yet in offenses involving her honor and chastity the law was more favorable to a married woman than to a maiden. An offense of this nature against the former was doubly punished. *Si autem mulieri haec fecerit, omnia dupliciter componet sicut antea diximus de virgine.*⁹

The Bavarian laws are less complete and definite, but as far as they treat of the subject they are nearly the same as the Alamanian. For slaying a freeman the penalty was 160 sol., and double the same if a free woman was slain. The reason given by the law for this doubling of the wergeld was that a woman is not able to defend herself with arms; and the law makes a further provision "that if, through the audacity of her heart, she wishes to fight in the manner of man, her composition will not be doubled."¹⁰ As in case of homicide, so in regard to arson and the selling of free persons into bondage; if the crime was against a woman, the penalty was doubled.¹¹ Whether this

¹ *L. Alam.*, tit. 46.1, 2.

⁴ *Ibid.*, tit. 91.

⁷ *L. Alam.*, tit. 76.

² *Ibid.*, tit. 47.1, 2.

⁵ *Ibid.*, tit. 67, Add. 22.

⁸ *Ibid.*, Add. 23.

³ *Ibid.*, tit. 50.1, 2.

⁶ *Ibid.*, tit. 49.

⁹ *Ibid.*, tit. 59.3.

¹⁰ *L. Bajuuv.*, tit. 3, cap. 13:1, 2, 3.

¹¹ *Ibid.*, tit. 9, cap. 1:3; tit. 15, cap. 5:2.

higher protection was extended to woman without respect to age cannot be determined from the laws, but the similarity between the Alamanian and Bavarian laws favors such an inference.

According to the Thuringian laws, the noble woman had the same wergeld as the noble man—600 sol.—and during the period of child-bearing, three times 600 sol.¹ While that of a free woman before maturity was 166⅔ sol., during the period when she bore children it was 600 sol., the same as the wergeld of the noble, and for the remainder of her life it was 200 sol.² In regard to other offenses the laws seemed to make no discrimination, treating man and woman alike. The sale of a freeman into bondage within his country was punished by paying his wergeld and a fine of 12 sol.;³ if he was sold beyond his country, by his wergeld and a fine of 60 sol., and the law added, *similiter de foemina*.⁴ The peculiarity of the law is in the low value of the maiden; being less by 33⅓ sol. than the value of a freeman, and of women who had outlived their greatest social usefulness. It is probable, as J. Grimm suggests, that the 166⅔ sol. was the ancient wergeld of the freeman, and for some reason it had been retained for the free maiden, while it was advanced to 200 sol. for the freeman and the free woman who had ceased to bear children.⁵ This, however, does not explain why the wergeld of the maiden was excluded from the general increase, and the problem becomes more complex in view of the fact that the nearest kin to the Thuringians, the old Saxons, placed the higher value upon the maiden. Their laws provided a wergeld for the noble of 1,440 sol., and apparently 240 sol. for a freeman, although this is not absolutely certain. For a woman, if she was a virgin, *si virgo fuerit*, double the amount, but only the simple wergeld if she was an *enixa*, *si iam enixa*.⁶

The significance of the terms *virgo* and *enixa* is not clear. It would be consistent with the other Germanic laws to understand *virgo* to mean a woman in the prime of life, and *enixa* either a young girl or a woman who had ceased to bear children; but *virgo*, even in the corrupted mediæval Latin, can hardly mean anything else than an unmarried woman. And since the Saxon laws were put into writing as late as 802 A. D., the influences of ecclesiastical notions would easily account for this anomaly in the laws. In the eyes of the church the

¹ *L. Angl. et Wer.*, tit. 1: 1; tit. 10: 3.

² *Ibid.*, tit. 10: 4.

³ This fine of 12 sol. was called *peace money*, *fredus*, *freda*. It was a fine in the modern sense, and was paid into the public treasury, and not, as the wergeld, to the injured party. (SCHROEDER, *Deutsche Rechtsgeschichte*, p. 80.)

⁴ *L. Angl. et Wer.*, tit. 7: 5.

⁵ J. GRIMM, *R. A.*, p. 405.

⁶ *L. Sax.*, tit. 2: 1, 2.

virgin had a higher value than the mother, thus reversing entirely the principle of the Germanic law, which gave the first place to the mother. The term *enixa* is not clear, but probably denotes either a young girl or an old maid.¹

In other respects the Saxon laws gave no preference to woman; *de muliere similiter* was the rule.* However, since the laws by no means contained all the rules and regulations governing social relations, common customs may have modified this general statement of the law in many particulars. The brevity of both the Saxon and Thuringian code warrants the inference that there was a body of unwritten customs of which we have no knowledge. They may have been favorable or unfavorable to woman. Since the laws were not reduced to writing until the beginning of the ninth century, and then by order of the central government, it is probable that the customs determining the relations of private life were even more favorable to woman than the written law. Many of the principles, noted in connection with the other laws, may be reasonably assumed to have found application in the social life of the Saxons.

The Lombard laws, although more complete than most of the Germanic laws in defining certain legal relations, were less so in reference to the wergeld. The penalties refer to specific cases rather than classes. They had been much changed from the older forms. It was no longer the simple wergeld of the ancient Lombards in the northern forests, but of the migrated Lombards in the sunny South, and adapted to the new environment and altered economic and social condition of the people. There is, however, reason to believe that the fundamental principles of the old system were retained in the new.

From *Edict Rotharis*, 13, 14, 19, it appears that the wergeld of a freeman was 900 sol. If a man killed his wife unjustly, the penalty consisted in the payment of 1,200 sol., one-half to the relatives of the wife and the other half to the king.³ If, on the other hand, the husband was under suspicion of having slain his wife unjustly, he was compelled to clear himself by means of twelve witnesses.⁴ The witnesses were his relatives; and so it really depended on them whether a man might slay his wife or abuse her with impunity. If anyone killed a maiden

¹ J. GRIMM, *R. A.*, p. 405; DU CANGE, *Glos.*, *in loco*.

Enixa has been interpreted by some to denote a loose woman (*stuprata*). J. Grimm dissents from this view, but this seems to be the meaning in a capitulary of 744 A. D. If such was the meaning of the Saxon law, we have a most remarkable fact. The other Germanic laws contain nothing like it. If the Saxons made such favorable provision in regard to this class of women, it presents a problem which it will be difficult to explain.

² *L. Sax.*, tit. 2.7.

³ *Ed. Roth.*, 200.

⁴ *Ibid.*, 166.

or woman, he had to pay 1,200 sol. in satisfaction, half to her relatives (*parentibus*), and half to the king.¹ The wergeld of woman, therefore, was one-third higher than man's wergeld. Other provisions of the law show that woman was much more severely dealt with than man if she committed a crime. If she plotted the death of her husband, he might do with her whatever he pleased, unless she could be cleared by her friends, *per sacramentum, aut per pugnam*, by oath or trial of battle.² Should a wife kill her husband, she herself was to suffer capital punishment.³

Such stern justice meted out to a woman criminal, while man for the same offense was only subjected to a heavy money fine, seems ignoble and tyrannical. Yet the Germanic laws furnish us with several hints in explanation of this apparently unjust discrimination. The Germanic legal idea in regard to woman was that she must have special protection because of her womanly qualities, and, consequently, if she willfully acted in contravention of such qualities and showed herself to be devoid of them, she was not only deprived of the special favor of the law, but treated with marked severity. The Bavarian law already referred to, which reduced the wergeld of a woman who fought like a man to one-half, confirms such a view.⁴ The Burgundian law provided that if a woman entered into a quarrel outside of the house and was injured, no penalty should be required.⁵ A similar distinction was made by the Lombard law. If a woman took part in a quarrel of men and was injured, the composition was the same as if her brother had received the injury. She was deprived of the higher protection extended to woman, for the reason, as the law puts it, "that she took part in the strife, which it is ignoble, *in honestum*, for women to do."⁶ As has already been mentioned in connection with the other laws, women, in committing a crime, were punished the same as men, and this was also true of the Lombard laws in regard to most offenses. If, for example, a man or woman should attempt to poison someone, the punishment was the same for either.⁷ For a crime against any other person woman was treated precisely the same as man, but any crime committed against her was more severely punished than if perpetrated against a man, unless she assumed the rôle of a man. However, if she killed her husband, or sought to kill him, she suffered the highest penalty of the law; while her husband, for the same crime against her, was subject

¹ *Ed. Roth.*, 202.

² *Ibid.*, 203.

³ *Ibid.*, 204.

⁴ *L. Bajuuv.*, tit. 3, cap. 8.

⁵ *Add. Pri.* 5, 2.

⁶ *Ed. Roth.*, 331; HAROLDUS, 2; *Ed. Roth.*, 28, 3.

⁷ *Ed. Roth.*, 139, 140.

to the same penalty as if it had been committed against any other woman. Inconsistent as this may be with our modern idea of justice, a simple and common-sense principle seems to be the basis of the legal rules. As long as woman acted in conformity with the ordinary conception of womanhood, the law extended to her the necessary protection which her position demanded. Whenever she chose to place herself on an equal with man, the special favor she enjoyed because of her womanly qualities was withdrawn, and from a legal point of view she accepted the status of man with all its consequences; or, as in the Burgundian law, she might be injured because of such a course of action, without finding redress in the law. But in the third case, if she abandoned every womanly virtue and resorted to the most unnatural of all acts—to slay her husband or to plot in his death—she lost every claim to lenient consideration. No plea of social usefulness could be made in her behalf; no excuse on the ground that she was a woman could have any weight. Stripped of every moral and meritorious quality pertaining to her sex, there was nothing to mitigate the rigor of the law. But why deal with her more severely than man? The reason is quite evident. Notwithstanding our modern theories and principles of law, our social instinct and our inalienable sense of justice, which transcend all conventional rules of law, demand of woman a more strict conformity to a moral life than of man, and depravity in one is more repulsive than in the other. For the same reason a minister of the gospel is much more strongly condemned by society for the perpetration of a crime than a prize-fighter. They are judged by different standards, and the feeling is beyond doubt a healthy one. Among the ancient Germans the natural difference between man and woman was keenly appreciated and found expression in their laws.

A striking illustration of what has just been said is found in the Lombard law in regard to molesting anyone on a journey. For such an offense against a free woman or maiden the penalty was 900 sol.¹ For the same offense against any other person, free or slave, including slave women, there was a punishment of only 20 sol.; thus making the penalty in case of a free woman forty-five times the amount paid in satisfaction for a like offense to man.²

¹ *Ed. Roth.*, 26, 374.

² *Ibid.*, 28, 27.

Among all of the Germanic people women seem to have been highly protected while traveling. "In the first centuries of the Middle Ages," says Weinhold, "it was possible for woman to travel safely from one place to another." During the reign of King Edwin of Northumberland a woman with a little child could travel across the country from one coast to the other without danger. But in the thirteenth century, a woman could no longer travel alone without injuring her reputation—a conclusive evidence of the change that had taken place in the position of woman. (Weinhold, *D. F.*, Vol. II, pp. 192, 193.)

The laws so far considered assigned to woman either throughout life or for a period of her life a higher wergeld than to man. In the other Germanic laws there was either no difference between the wergeld of man and woman, or, as in the Visigothic law, to the disadvantage of woman.

The Frisian law refers to the wergeld of woman in only a single provision: "If anyone slay a woman he shall make satisfaction for it according to her rank, just as he ought to make satisfaction for a man of the same rank."¹ The wergeld of a noble was 80 sol., of a freeman 53⅓ sol., and a serf, *litus*, 26⅔ sol.;² and this, accordingly, would be the wergeld of woman. Whether common custom modified and amplified this law or not must remain doubtful. Since the law is silent in regard to pregnant women and small children, it is very probable that this general law was supplemented by unwritten customs, and woman may have enjoyed the advantages of a higher wergeld, at least during part of her life.

The Burgundians had abandoned the old Germanic system of making a money settlement for homicide, and applied the Mosaic law instead. However, in a modified form, the old system was still used. If there were extenuating circumstances, one-half of the wergeld was the legal penalty for homicide. The wergeld was estimated according to rank. For the first class, *nobilis*, 150 sol.; for the second class, *mediocris*, 100 sol.; and for the third class, *minoris*, 75 sol.³ In each case this sum must be doubled to obtain the full wergeld. The laws made no specific mention of the wergeld of women, but it is reasonable to infer that it was the same. Very little information can be obtained from the laws throwing light upon the comparative status of woman from this particular point of view. For some offenses woman was punished the same as man,⁴ and no special immunity or favor was conceded to her in the laws.

Of all the Germanic peoples the Visigoths alone valued woman less than man. The system of wergeld for homicide had fallen into disuse among them, capital punishment or flogging having taken its place; but it was still retained in making reparation in case a person was killed by a vicious animal. The system was quite elaborate and worked out in detail. A boy was valued at 60 sol. during the first year of his life; at 70 sol. during the next three years; for the following three years at 80 sol.; for the ninth year at 90 sol.; and for the

¹ ADD., *L. Fri.*, tit. 6.

³ *L. Burg.*, tit. 2, 2.

² *L. Fri.* tit. 1, 1-10.

⁴ *Ibid.*, tit. 76, 3.

tenth year at 100 sol. From ten to fifteen years his value increased 10 sol. for each year. For the years from fifteen to twenty the wergeld is not given, but it is probably the same as at fifteen, 150 sol. Man had the highest value from twenty to the age of fifty, 300 sol. After that time his value declined. From fifty to sixty-five years it was 200 sol., and from this age until the end of life it was 100 sol. Up to fifteen years of age the wergeld of a girl was one-half the wergeld of a boy during the same period. From fifteen to forty years of age woman had a wergeld of 250 sol.; from forty to sixty years of age, 200 sol.; and subsequently, 100 sol.¹ Woman was at a disadvantage, except during the five years from fifteen to twenty, when, if the inference is correct that the youth had a wergeld of 150 sol., a maiden was valued at 100 sol. higher than a youth.

The estimate of the comparative social value of woman among the Gothic people is evident from this law. But the question arises how far this estimate was influenced by Roman and Jewish ideas. There is unmistakable evidence in the laws that the Roman legal principles were in many cases adopted by the Visigoths, and the legal status of woman was, in a large measure, determined by them. The laws of succession and guardianship were Roman rather than Germanic, and the scale of wergeld may have been altered in accordance with the Roman conception of the worth of woman. But in the absence of positive evidence of a different scale of wergeld in the period preceding the migration, a more definite statement cannot be ventured. Since in all the other Germanic laws the wergeld of woman was equal to, or greater than, the wergeld of man, the probability is that foreign influence was the cause of this exception.

Regarding other crimes or injuries, the penalties were the same for men and women. No distinction was made as to whether the crime or offense was committed by men or women, or against either.²

The last of the Germanic laws to be considered are the English or Anglo-Saxon laws. These laws differ somewhat from those so far considered. They were drawn up under various kings of the different Germanic peoples who settled in Britain. The wergeld was not the same among all the peoples, and a comparison is therefore more difficult. Nor is the wergeld of woman always distinctly mentioned. As far as can be learned from the laws, no distinction was made between the different sexes. The wergeld of a maiden was the same as that of

¹ *L. Wisl.*, Lib. VIII, tit. 16.

² *Ibid.*, Lib. VII, tit. 5, 17, 18; Lib. VII, tit. 3, 3.

a freeman.¹ If a pregnant woman was slain, the full wergeld was to be paid for the woman and half a wergeld for the child.² Whenever the wergeld for men was given without specifically mentioning the wergeld of women, it may be taken for granted that there was no difference. From the earliest laws it appears that the wergeld of freemen was 100 shil.,³ while that of a noble was 300 shil.⁴ In the later period the scale of the wergeld was greatly changed and made dependent upon the possession of land. A "twelve hynde" man's wergeld was 1,200 shil., and a "two hynde" man's 200 shil.⁵ In the later period the wergeld of a common freeman seems to have been uniformly 200 shil.⁶ If not otherwise specified, the wergeld of woman must be assumed to have been the same, according to her rank. The law of Ethelberth provided that the "maiden bôt" be as that of a freeman.⁷ This is also confirmed by the *Leges Henrici primi: si mulier occidatur sciut weregildum ejus est reddatur, experte patris, sicut observamus in aliis*.⁸

This investigation of the laws for the purpose of finding the comparative value assigned to man and woman, or perhaps to express it in a less objectionable form—to determine the comparative protection granted by the laws to them, gives us the data for a few general deductions.

The Visigoths were the only Germanic people who valued woman less than man; and even they gave her a higher social value from fifteen to twenty years. None of the others valued woman less, and most of them gave to her a higher wergeld, either during part of her life or during the period when her life was most essential to the social well-being. The Frisians, Burgundians, and English made no distinction whatever, while the Alamaniacs and Bavarians had a double wergeld for woman throughout life. The Ripuarian and Salic Franks, as well as the Thuringians and Saxons, assigned to her a higher value during the period of motherhood; being three times the wergeld of man among the first three; and if the term *virgo* in the Saxon laws denoted maturity or motherhood, twice the wergeld of man among the last named people. The Thuringian law alone valued a free maiden less than a free man.

¹ *Ethb.*, 74.

² *Aelfred*, 9.

³ *Ethb.*, 21; *Hloth. and Ead.*, 3.

⁴ *Hloth. and Ead.*, 1; THORPE, *Anc. L. and Inst.*, Vol. I, pp. 187, 189. The wergeld in the earlier Anglo-Saxon laws is a subject of controversy. It is difficult to determine the exact amount, and I am not satisfied that the figures given are correct. To the present investigation they are rather immaterial. (SCHMID, *Gesetze der Angelsachsen*, pp. 11, 396-9, 675, 676.)

⁵ THORPE, *Anc. L. and Inst.*, p. 175.

⁶ *Ibid.*, p. 187.

⁷ *Ethb.*, c. 74.

⁸ *L. Hen.*, pr. 70. 15.

These comparisons place the favorable status of woman in the laws beyond question. Those laws which treat her as an inferior are exceptional. There is a striking contrast between these laws and those of the twelfth and thirteenth centuries, when woman was valued at one-half of the wergeld of man,¹ and in some cases being reduced to one-sixth of her former value. This is one of the significant facts in the history of the Middle Ages, and one that has for some reason or other been treated as if it were dangerous to acknowledge. J. Grimm makes the statement that "in many ways woman was valued less than man,"² and proves it from the Roman law and the mediæval German law. When confronted by the facts of the ancient laws, he speaks of it as strange that in several of them there was a departure from the general rule of valuing woman less than man,³ while at the same time he shows that the higher wergeld was general among the ancient Germans, not only of those on the continent, but also among the Scandinavians.⁴ It might well be asked why the double and triple wergeld was reduced to one-half of man's wergeld. That this is due to an original difference, as J. Grimm⁵ suggests, cannot be admitted; for those very people who favored woman with a higher wergeld in their ancient laws reduced it to one-half of man's in their later laws.⁶ From a legal point of view woman was generally treated as inferior to man in the later period. Weinhold, in his history of the *German Woman in the Middle Age*, reluctantly concedes that

It might at all events be assumed that the German judged offenses against woman not more leniently than those against man, that the wergeld and penalties were the same for man and woman.

He then accounts for the higher wergeld as emphasizing the defenselessness of woman.⁷ In the first place it is not a matter of assumption, but a fact substantiated as well as any fact can be, that the Germans did not judge offenses against woman more leniently than against man. On the contrary, they were judged more severely by most of the Germanic people. Neither is the second statement, "that the defenselessness of woman is the reason for the higher penalties," more consistent with the facts. It would surely be difficult to explain what sex had to do with the defenselessness of an unborn child or a buried person, to both of which the Alamanian law gave a double value if they were females. That the defenselessness of woman was an element in determining the law may be admitted, but it does by no means

¹ J. GRIMM, *R. A.*, p. 404.

³ *Ibid.*, p. 404.

⁵ *Ibid.*, p. 406.

² *Ibid.*, p. 403.

⁴ *Ibid.*, p. 405.

⁶ *Ibid.*, p. 404.

⁷ WEINHOLD, *D. F.*, Vol. I, p. 182.

offer a full explanation, nor is it at all helpful in accounting for the laws of the subsequent period, when woman had surely not improved in the art of self-defense; and yet the law withdrew the higher protection from her. Why not say it was because the Germans wished to emphasize the defenselessness of man? The reasoning would not be less logical. Men instinctively abstain from harming a woman when they would not do so in case of a man; and it must be remembered that this chapter does not treat of those dangers to which woman is most liable, but of homicide, from which the very nature of man protects her even in a barbaric age. This being so, why should the laws not provide a higher protection for man in order to give him an equal chance in life?

But weakness or strength have little weight in determining the laws of a people, and as a rule strength more often than weakness has the law in its favor. The law is to subserve the organized life of a people, to guard and sustain the institutions essential to the social organization; and not to provide a special protection for certain individuals or classes of people. It is this which gives rise to the heavy punishment for interfering with, or offending against, public officials and those who are in authority. Whether right or wrong, whether it ultimately secures the highest social welfare or not, the organized will of the people has ever demanded submission to this general rule. To say that women are favored by law because of their defenselessness, however valid the abstract reasoning may be, is to pervert a common principle which governs organized life. The primary reason for the favorable position of women among the ancient Germans must, therefore, be sought in different social aims.

In the earliest sources two characteristics of the ancient Germanic society are made very prominent: the weight and influence of women as a class, and the sanctity of the family-life. Whatever may have been the reason for it, the evidence cannot be doubted, and from a rational common-sense view the laws were made to sustain, and to be in conformity with, the influence of woman, and to insure the development of a healthy family-life. She was recognized as being of higher social value than man, or at least his equal, and, as a mother, more essential than the father. The well-being of society at large, and of the family in particular, depended upon her. As long as she proved worthy of this high conception of her place in society, she found herself supported and protected by the law, but when she lowered herself to the level of man, or became a criminal, she was subject to equal, or even severer, penalties than man.

CHAPTER IV.

MAIDENHOOD AND MARRIAGE.

PRIMARILY the status of woman depends on the place accorded to her in the home and the family. If she is reduced to a mere drudge or plaything, subject to the arbitrary will or whims of a master, she can be of little positive force in the social organization of which she is a part; nor can she have any share in determining her own condition. But if her position in the family commands the respect and devotion of its members, her influence, both in private and public, becomes of paramount importance.

For an intelligent study of woman in her private relations a clear conception of the family itself is a prerequisite. How was the family constituted? What were its powers and limitations? are questions which must first engage our attention. The ancient Germanic family, like the family among all primitive peoples, had many characteristics not associated with it among highly civilized peoples. In the absence of a well-developed system of private and public laws, securing the rights and defining the duties of the individual members, and a government to enforce those laws, it devolves upon the family to provide for this deficiency. To bring an offender to justice, to avenge a wrong, to share in damages received or paid, was a matter of the family and not of individuals.¹ But such important functions could not be assumed or carried out by the family in the modern sense of the term. There was, therefore, a wider organization, which included all the nearest relatives of both husband and wife. They were mutually responsible for the acts and obligations of the individual members. This wider organization was the *sippe*.² The *sippe* was based upon blood-relationship. Both maternal and paternal relatives constituted its membership. Although varying somewhat among the different peoples, it included always several degrees of kinship. With some exceptions, where one or the other had specific privileges or obligations, the rights and duties of the maternal and paternal relatives in this organization were the same. It cannot be said to have been based on the agnatic principle,³

¹ *L. Sal.*, tit. 61; SCHMID, *Gesetze der Angelsachsen*, p. 395.

² The *sippe* ahd. *sippja*, *sibba*, ags. *stō*, signifies "peace," "friendship." It was the social unit from which all rights were derived. It included all those related by blood. (GRIMM, *R. A.*, p. 467; SCHMID, *Gesetze der Angelsachsen*, p. 652.)

³ SCHROEDER, *D. R.*, p. 63.

for the laws gave equal rights to the cognates, and when they made a distinction it was by no means always in favor of male kinship.

The *sippe* was the most important unit of organization in the ancient Germanic society. On the one hand, it performed some of the functions of the modern state, and, on the other, it held a superior guardianship over the families within it. There could be no important legal transaction by anyone without having the members of his *sippe* present. It was a sort of miniature state, democratic in its nature. The heads of the simple families had equal rights, and, in general, each was responsible for the members of his family. In important matters, and when he failed to meet his obligations, the members of the *sippe* were consulted or became responsible.¹ This organization of the *sippe*, with its common duties and privileges, played a most important part in the public as well as the private life of the people,² not only protecting its members against danger from without, but tempering the caprice of despotic individuals within. No grave crime could be punished, and no important transaction completed, without the consent of this circle of family kinship.³ The laws were constantly referring to this body as having a common responsibility and a common authority in respect to the actions of any of its members. This fact deserves special notice, because it is an essential feature of the family-life; and the paternal power, as well as that of the guardian, cannot be clearly comprehended without having this fact constantly in mind.

According to Germanic law, only the heads of the families were independent, *sui juris*. Women and children could not act in their own right, and were under the guardianship, which the laws designate by the term *munt* or *mundium*.⁴ The *munt* implied guardianship, and, in a certain sense, a property right in the individual who was in the *munt*, and corresponded somewhat to the *in manu* in the Roman law.⁵ However, the German *munt* was not as simple as the Roman *in manu*. Among the primitive Germans the *munt* pertained to the *sippe*,⁶ and it had absolute power over the persons who were not *sui juris*, but later the *munt* was conferred on an individual; but, although

¹ L. Sal. tit. 61; Tac., *Germ.*, c. 19, c. 21; BRUNNER, *D. R.*, Vol. I, pp. 81-95; WAITZ, *D. V.*, Vol. I, pp. 73, 74.

² Tac., *Germ.*, c. 7; CAE., *B. G.*, Vol. VI, c. 22.

³ Tac., *Germ.*, c. 19.

⁴ *Munt*, *mund*, or *mundium* signified originally "protection," "peace," and at times it was used in this sense in the laws (SCHMID, *Gesetze der Angelsachsen*, pp. 634, 635), but usually it had a more comprehensive meaning.

⁵ J. GRIMM, pp. 407-9.

⁶ WEINHOLD, *D. F.*, I, p. 180.

he was intrusted with extensive powers, the *sippe* still retained many of its former rights, constituting itself a superior guardian, as it were, and becoming a permanent check upon the *munt-walt*—the one who held, or had obtained, the *munt*. This distinction is of fundamental import; without it, the family relations cannot be understood. Any independent member of the family might be the guardian.¹ One of the nearest relatives, even a son or nephew, might be intrusted with that responsibility.²

Before her marriage a woman was ordinarily in the *munt* of her father, provided her mother was in his *munt*; that is, provided he had fulfilled all the legal requirements at the time of marriage. Otherwise the mother, as well as her children, remained in the *munt* of her father, or the one in whose *munt* she was at the time of her marriage.³

The rights conferred by the *munt* are frequently spoken of by writers as absolute and unlimited, even as to the life and death of the dependent person.⁴ So Dr. Schroeder, in his history of German law, holds that

some traces of the harshness with which the authority of the head of the family must have been endowed in the Indo-Germanic period have been preserved in the Germanic laws of the Middle Age. Partly even in the Frankish period the father had the unqualified right to dispose of his daughters in marriage. In cases of distress he could sell his wife and children into bondage. Both were subject to his severest corrections and punishment. In extreme cases [such as gross immorality, adultery of the wife, or an attempt to take his life], with the consent (*unter Mitwirkung*) of the *sippe*, he had even the right to expel, enslave, sell, or execute her.⁵

This statement is misleading. While he mentions the *sippe*, he does not emphasize its importance. The very fact that the *sippe* had to be consulted deprived the head of the family of any freedom to impose a severe penalty. He might punish, but the *sippe* determined the punishment. The right to punish was conferred by the *sippe*, and was not inherent in the head of the family. Nor is he right in his supposition in respect to the Indo-Germanic period. The evidence we

¹ Ed. Roth., 205.

² L. Sax., tit. 7.

³ I. *Si quis filiam alterius non desponsatam acceperit sibi uxorem si pater eius eam requirit, reddateane, et cum quadraginta solidis eam componet.*

II. *Si autem ipsa femina sub illo viro mortua fuerit, antequam ille mundium apud patrem adquirat, solvet, eam patri eius quadrigentis solidis.*

III. *Et si filios aut filias genuit ante mundium, et omnes mortui fuerint, unumquemque cum weregildo suo componat patri feminae.* (L. Alam., tit. 54.)

⁴ J. GRIMM., *R. A.*, pp. 461, 462.

⁵ SCHROEDER, *D. R.*, p. 65.

possess goes to show that the paternal power was then even more limited by the *sippe* than in the later period.¹

While it must be admitted that there is some evidence sustaining the opinion that the head of the family, the guardian, had absolute, or almost absolute, power over those who were in his *munt*, the preponderance of historical and legal evidence is to the contrary. In extreme cases, and under exceptional circumstances, such absolute power may have been exercised, but commonly it was circumscribed by the rights of the *sippe*, and its abuse mitigated by the common interest of the relatives. Even from the provisions of those laws which concede more extensive rights to the father and brother than to other relatives in possession of the *munt*,² it can by no means be asserted that they were not subject to the control of the *sippe*. In times of great distress the father might dispose of his children, and the husband of his wife,³ but it was in consequence of bitter necessity,⁴ and not of individual caprice.

The exposing of new-born infants, a custom common among primitive peoples,⁵ seems to have usually been regarded as a crime among the Germans.⁶ The custom was not entirely obsolete.⁷ It was frequently practiced among the Scandinavians,⁸ and the Frisian law sanctioned the practice. But, contrary to the general supposition that it was the exclusive right of the father to say whether the child should live or not, this right the Frisian law conceded to the mother.⁹ Among the Visigoths the exposing or killing of children was forbidden under severe penalties.¹⁰ The other Germanic laws contain no specific provisions on the subject, but from the fact that they placed a high value on the child, which among most of the people was equal to that of the adults, we may infer that infanticide was not a common practice of the Germans, but abhorred by them.¹¹ It is probable that for special reasons, such as bodily infirmity,¹² or because of famine, the child might be exposed; but, in general, the observation of Tacitus may be regarded as reliable: "To limit the number of children, or to kill one of the

¹ BRUNNER, *D. R.*, p. 89; WEINHOLD, *D. R.*, Vol. I, p. 180.

² *Ed. Roth.*, 195, 196.

³ TAC., *Ann.*, IV, c. 72; PROCOPIUS, *B. V.*, I, c. 25.

⁴ J. GRIMM, *R. A.*, p. 462.

⁵ J. GRIMM, *R. A.*, pp. 455, 456.

⁶ TAC., *Germ.*, c. 19.

⁷ *Das Leben Lindgers*, c. 6, c. 7.

⁸ J. GRIMM, *R. A.*, p. 457.

⁹ *L. Fri.*, tit. 5.1.

¹⁰ *L. Wisl.*, tit. 4; tit. 4.1, 2.

¹¹ *L. Sal.*, tit. 22.2; *L. Bajuuv.*, tit. 7, 18; *L. Wisl.*, Lib. VI, tit. 3.1.

¹² WEINHOLD, Vol. I, p. 79.

younger children, was held to be a shameful crime."¹ What has been said in reference to taking the life of infants may also be affirmed of the sale of children. The laws prohibiting such sale are proof of its occurrence;² and under the stress of bitter necessity it was permitted,³ but it was neither frequent nor legalized. It was inconsistent with the principles governing the family organization. Large families were rather preferred than small ones. Tacitus says :

The greater the number of relatives, the more numerous the ties of marriage, the more reverence awaits old age, and no premium is set on childlessness.⁴

Aside from any humane consideration, the family, as well as the *sippe*, gained by an increase of numbers.⁵ The personal security of the individual and his standing in a community depended, in a large measure, upon the number of his relatives. They defended him in the courts of law;⁶ they aided him in paying his penalties when convicted of a crime; they saved him from being sold into bondage;⁷ and they protected him against the vengeance or criminal purpose of others.

These instances are mentioned mainly to show the legal and customary limitations of the rights of the father or head of the family in respect to those subordinate to him. This double source of restrictions—those which were embodied in the common law and those peculiar to the organization of the *sippe*—was a safeguard against arbitrary treatment of the dependent members of the family.

Woman, as has been said, could never be independent (*sui juris*), but was always in the *munt* of some male relative. The daughter was ordinarily in the *munt* of her father until her marriage or the death of the father, when she passed into the *munt* of her husband or nearest relative. What has been said in reference to children in general applied also to her. Less independent than our modern sense of justice demands, she was not entirely subject to the will even of her father.

Little is known of her life during childhood. She grew up without much care, together with the children of the unfree, among the same

¹ TAC., *Germ.*, c. 19.

Infanticide is practiced in many parts of the world, but by no means as extensively as MR. McLENNAN has attempted to prove (*Studies in Ancient History*, chap. vii). The more conservative conclusion of MR. WESTERMARCK is the more plausible one (*History of Hum. Mar.*, pp. 311-14). His investigation proves it to be an exception rather than a rule, and where the practice is found it is because of some special reason.

² L. *Wisl.*, Lib. V, tit. 4.12.

³ J. GRIMM, *R. A.*, p. 461.

⁴ TAC., *Germ.*, c. 20.

⁵ STARR, *First Steps*, p. 235.

⁶ L. *Burg.*, tit. 8.

⁷ L. *Sal.*, tit. 61.

cattle and on the same ground, as Tacitus relates.¹ Stern as the conditions of life were, ease and comfort could not fall to her share. Some calamity might cause her to be exposed while an infant, war or famine might reduce her to a chattel, yet ordinarily she would be protected from misuse, if not by natural affection, by family interest and the solicitude of relatives.

On one point there can be no mistake. The customs and laws governing her early life were conducive to a healthy physical development. Her tall, slender, and vigorous body excited the admiration of the Romans.² She shared the work in the house and field; for this work was left to woman and those who were unable to bear arms.³ In some of the wars she accompanied the war-host, and aided and encouraged the men in battle.⁴ Of refinement and culture there could be no thought. Her environment was crude and barbaric, but well adapted in preparing her for meeting the hard conditions of life.⁵

These fragmentary touches of her life during childhood and youth emphasize her freedom from social restraint, and the absence of social vices. In the house, in the field, and in war, she moved freely in the society of which she was a part. With serfs as playmates and warriors as companions, she was nevertheless protected from violence and corruption.

The purity of life among the Germans was praised by both Cæsar and Tacitus, and to this they attributed the health and inexhaustible strength of the race.⁶ The validity of their reasoning cannot be questioned. Physical perfection implies freedom from such vices as will impair it. Even if we should have no other knowledge of the Germans, their physique would assure us that healthy social and sexual relations were maintained by them.

The laws fully sustain this obvious inference. Any offense against the person or honor of a maiden was severely punished. To violate or corrupt a woman was accounted one of the gravest crimes. Heavy money fines, servitude, or death were the penalties which awaited the criminal. Among the Visigoths the abductor of a maiden was to be

¹ TAC., *Germ.*, c. 20.

² *Ibid.*, c. 20; PROCOF., *B. V.*, II, c. 4; *B. Goth.*, III, c. 1.

³ TAC., *Germ.*, c. 15.

⁴ CAE., *B. G.*, I, c. 51; TAC., *Ann.*, IV, c. 18; *Germ.*, c. 7; PLUTARCH, *Life of Marius*, c. 19; PROCOF., *B. V.*, II, c. 2.

⁵ POMPONIUS MELA, III; *Zeitschr. für D. A.*, Vol. IX, pp. 530, 531; DAHN, *Urgesch. der Germ. and Röm. Völker*, Vol. I, p. 38.

⁶ TAC., *Germ.*, c. 19, c. 20; CAE., *B. G.*, VI, c. 21.

surrendered to the parents or relatives, giving them full power to kill or sell him. If the relatives were willing to settle with him on a money basis, the sum to be paid was 300 sol., in case she was not returned; and 150 sol. if she was returned. However, if he was not able to pay, he was reduced to servitude.¹ If a maiden or widow was recovered before she was violated, the offender forfeited one-half of his property to her, but if she was violated, all his property; and besides he received two hundred stripes in public, and was given into servitude to the relatives of the one injured.²

Other provisions of the law deal with special cases.³ A physician was not even permitted to treat a woman unless some one of her relatives or trusted servants was present.⁴

The laws of the other Germans were not less definite on this subject. According to the Lombard laws, if anyone interfered with a free woman or maiden while on a journey, or inflicted any injury, the fine was 900 sol.⁵ For committing a rape upon a free woman the penalty was the same.⁶ On the other hand, if a free maiden or woman committed adultery voluntarily with any freeman, the parents might punish her. The man either might marry her and pay 20 sol. for the offense, or pay 100 sol., one-half to the king and one-half to the *munt-walt*.⁷ Among the Salic Franks, if any three men carried a maiden from her house, each one was fined 30 sol., and if there were more than three, each of the rest 5 sol., and those who were with the arrows, 3 sol. each. The *raptor* was fined 62 sol.⁸ The *raptor* must be understood to be the man in whose behalf the maiden was carried off. If a *puer regis vel lidus*, persons who did not enjoy the full rights of freemen, committed such a crime, he suffered capital punishment.⁹ If a band assailed and took by force a free woman or maiden, each one who aided in this was fined 200 sol., and of those who were present and did not take part each one was fined 45 sol.¹⁰ The Ripuarian law provided a penalty of 50 sol. for illicit intercourse with a free maiden.¹¹ Among the Burgundians, if anyone carried away a maiden, and she returned corrupted to her parents, he was to pay six times the *pretium*, originally the maiden-price, and a fine of 12 sol. Should he not be willing or able to pay the amount, he was delivered to the parents of the maiden, and they might do with him whatever they pleased. But should the maiden of her own free will seek the man

¹ *L. Wisiz.*, Lib., VII, tit. 3.3.

² *Ibid.*, Lib. III, tit. 3.1.

³ *Ibid.*, Lib. III, tit. 3.4.

⁴ *Ibid.*, Lib. XI, tit. 1.

⁵ *Ed. Roth*, 26.

⁶ *Liutp.*, L. 21.

⁷ *Ed. Roth*, 189.

⁸ *L. Sal.*, tit. 16.1, 2, 3, 4.

⁹ *Ibid.*, tit. 16.6.

¹⁰ *Ibid.*, tit. 14.13.

¹¹ *L. Ripu.*, tit. 35.2.

and go to his house, and there commit adultery with him, he paid only three times the *pretium* of the maiden; and if she was not violated, he was free from any blame.¹ Should a maiden live secretly in adultery with a Barbarian or Roman, she would be declared infamous. The man was fined 15 sol., but was otherwise free from calumny.² By the Frisian law, the ravisher of a maiden was compelled to make satisfaction by paying three times the amount of his wergeld, which was 80 sol. for a noble and 53½ sol. for a freeman; if the maiden was a serf, a single wergeld for satisfaction to the maiden and 10 sol. to her master.³ The Thuringian laws compelled the one who carried off a free woman to return her with 200 sol., and restore all that he had taken with her, adding for each thing taken 10 sol.⁴

Equally favorable to women were the edicts of Theodoric, the laws of the Ostrogoths.⁵ Less favorable in protecting the honor of women were the Anglo-Saxon laws; and in some respects the Alamanian and Bavarian laws. In the laws of King Æthelbirth, the penalty for carrying off a free maiden was 50 shil., and "if she become pregnant 35 shillings, and 15 shillings to the king."⁶ Whether this last amount was in addition to the 50 shil. is probable, but not altogether clear. Among the Alamanians the penalty for ravishing a maiden was 40 sol. If anyone interfered with her on a journey and bared her head, 6 sol., and 12 sol. if he denuded most of her body.⁷ For carrying off a maiden by force the Bavarian law imposed a penalty of 80 sol., one-half of which was paid to the parents and the other half to the *fisc*.⁸ If anyone committed adultery with a free maiden, she consenting, he was fined 12 sol.⁹

These provisions of the laws show how far society safeguarded the honor of a free maiden; but there was another class which deserves notice in this connection. Besides the free there were two dependent classes, the serf and the slave.¹⁰ These classes, although undoubtedly small in the early period, were of considerable importance in the Middle

¹ *L. Burg.*, tit. 12.1, 2, 3.

² *Ibid.*, tit. 44.1.

³ *L. Fri.*, tit. 9.8, 9, 10.

⁴ *L. Angl. et Wer.*, tit. 10.1.

⁵ *Ed. Theo.*, 17, 18, 59.

⁶ *L. of King Æth.*, 82, 84.

⁷ *L. Alam.*, tit. 58.1, 2; Add., 41, 42.

⁸ *L. Bajuv.*, tit. 7, cap. 6.

⁹ *Ibid.*, tit. 7, cap. 8.

¹⁰ The serf and the slave formed two classes quite distinct. The slave was a chattel without any rights, subject to the whim and will of his master. Under the term "serf" I include that class which in the laws is designated by various terms, such as *leto*, *ledus*, *litus*, *allio aldins*, and others. It is difficult to define their status. They had certain recognized rights, such as to contract a marriage, to own property; they had also a wergeld, but were bound to the soil, and had to render fixed service. It is probable that they were descendants of a subjugated people. (BRUNNER, *D. R.*, Vol. I, pp. 101-4; SCHROEDER, *D. R.*, pp. 48-50; J. GRIMM, *R. A.*, pp. 305-10.)

Ages, and were not without influence upon the social life of the people. Such influence can never be anything but pernicious and degrading; and it was not otherwise among the Germans. The respect and protection accorded to the free was not extended to the unfree. On the one hand, they were more severely dealt with for offenses perpetrated by them; and, on the other, they were subjected to injuries without having the power of redressing them. In either case the moral effect was bad. This was especially so in reference to the violation of unfree women. Notwithstanding that this could not be done with impunity, the penalty was altogether inadequate to protect the women of these servile classes; and in respect to this there is but little difference in the various laws. All alike fix a low penalty for such an offense. A few examples from the laws will suffice to confirm what has been said.

The Gothic law imposed a penalty of 20 sol. for the violation of an unfree maiden, *ancilla*.¹ An equal sum was exacted by the Lombard laws for the same crime.² If the woman was born of a free mother, the fine was 40 sol.³ Still more lenient were the Bavarian, Alamanian, and Anglo-Saxon laws. Only 8 sol. in the case of a maiden made free by *manumission*, and 4 sol. if she was a slave.⁴ According to the value of the slave it was 6 sol. or 3 sol. in the Alamanian laws.⁵ In the Anglo-Saxon law, if it be a king's maiden, 50 shil.; but if she should be a slave of the lowest class, 1 ½ shil.

Different fines were imposed for the violation of unfree women of the intermediate classes in accordance with their value.⁶ The *Lex Salica* fixed the penalty for violating the king's maiden at 30 sol., and at 15 sol. for any other slave.⁷ The latter was also the penalty provided by the Ripuarian law.⁸ It was only 4 sol. in the Frisian law, and this on condition that the servile maiden had not been violated previously, otherwise it would be less, and might be only one-third of a solidus.⁹

Thus, while the person and honor of the free maiden were protected by the laws, the servile maiden might be outraged without having a sufficient remedy. Such an unnatural discrimination between the social classes was a constant threat to the moral character of the people. The license it gave to men would in the end affect women and family-life in general. The evil would be commensurate with the degree of social tolerance given to it. In the penalties we might assume to have

¹ *L. Wisí*, Lib. III, tit. 4, 16.

² *Ed. Roth.*, 208, 209.

³ *Ibid.*, 206.

⁴ *L. Bajuuv.*, tit. 7, cap. 11, 13.

⁵ *L. Alam.*, tit. 80, 1, 2, 3.

⁶ *Ethb.*, 10, 11, 12, 14, 15, 16.

⁷ *L. Sal.*, tit. 29, 1, 2.

⁸ *Ibid.*, tit. 58, 17.

⁹ *L. Fri.*, tit. 9, 3-7.

a fair index of this tolerance, if it were not for other evidence which deserves to be noticed. An injury to a free maiden was punished with a view to make satisfaction to the injured person, as well as to atone for the social wrong. Personal satisfaction was not part of the composition when an offense was committed against a member of the servile class. There is clear evidence of this in the Salic law, where a freeman was fined 15 sol. for illicit intercourse with a slave, while a slave for the same offense was fined only 3 sol.¹ Furthermore, it is probable that in the earlier period the servile class received greater consideration. Slaves, in the Roman sense of the term, were few among the Germans in the pre-migratory period.² The *litus*, the half-free, as is evident from the Frisian laws, and also from their wergeld in the other laws, enjoyed a greater degree of protection, even in the later period. In general, illicit intercourse was strongly condemned by society.

Youthful offenders were held in abhorrence by society,³ and the social disapproval may have been more deterring than the laws indicate. The meagerness of the sources does not permit of a more definite statement.

The migratory period, with all its attendant changes and breaking up of the old social relations, introduces an additional element of uncertainty, and make the facts of the latter period of doubtful value in interpreting the conditions of the former. The contact and constant intermingling with the degraded Roman society would naturally affect the Germans; and, since the vices of a higher civilization are much more easily appropriated by a barbaric people than its virtues, it is quite certain that the social life of the Germans had degenerated rather than improved. An increase in the number of slaves and familiarity with the Roman treatment of them would necessarily have its evil consequences.

From the legal point of view the slave, of course, was a mere chattel, and, as such, is foreign to this discussion; but this artificial distinction can never become a reality; and a study of the relations between the classes throws considerable light upon the moral character of the dominant class.

The prominent feature in the early life of a free woman was the healthful moral and physical development. The customs and laws of the people seem to have been adopted with that objective purpose in view. Not less so were the social regulations regarding her marriage.

¹ *L. Sal.*, tit. 29.3.

² *TAC., Germ.*, c. 25.

³ *CAE., B. G.*, VI, c. 21; *TAC., Germ.*, c. 20.

1. There was a restriction on age. According to Tacitus, the Germans were not in haste to marry their daughters,¹ and Cæsar states that it was disgraceful to marry before the age of thirty.² As to the customary age of marriage there is some doubt. Full maturity and fitness were probably the main conditions, and late marriages were preferred to early ones. Those who remained sexually immature the longest received special praise from their friends, for it was believed to be conducive to a vigorous physical development. Tacitus gives it as a reason for their strength, and adds: "Equal to him in physical vigor, she is joined to her husband in marriage, and the strength of the parents is reproduced in the children."³ The governing principle determining the age of marriage can be readily inferred from these statements. Before the settlement in the Roman empire, marriages at an early age were presumably in disfavor. Subsequent to that period, there is evidence of earlier marriages. The Lombard law places the marriageable age for a boy at sixteen, and for a girl at twelve; and the laws imply that marriages were contracted even before the parties had reached such an age. They were forbidden under a penalty of 900 sol.⁴ But these laws were not enacted until the eighth century, over a century and a half after the settlement of the Lombards in Italy, and it remains a question whether these early marriages are not to be ascribed to an imitation of Roman custom rather than to the ancient German usage. Not only were early marriages at variance with the observations of Cæsar and Tacitus, but also inconsistent with a northern climate and the care with which the Germans guarded their physical well-being. In the later Middle Ages the church removed practically all restrictions as to age.⁵

2. Another restriction upon marriage was that the persons must not be within a certain degree of relationship, and in this respect the barbaric laws were more strict than those of the present time. The Salic law prohibited union with a sister, a niece, or the wife of a brother or uncle. If such a marriage was entered into, the parties were to be separated and children from the union were declared illegitimate.⁶ The Alamanian and Bavarian laws were identical and

¹ TAC., *Germ.*, c. 20.

⁴ *Liutp.*, L. 12, 129.

² CÆS., *B. G.*, VI, c. 21.

⁵ J. GRIMM, *R. A.*, pp. 435, 436.

³ TAC., *Germ.*, c. 20.

⁶ *Si quis sororem, aut fratris filiam, aut certe alterius gradus consobinam, aut fratris uxorem, aut avunculi, sceleratis nuptiis sibi iunxerit, huic poenæ subiaceat, ut a tali consortio separetur; atque etiam, si filios habuerint, non habeantur legitimi hæredes, sed infamia sunt notati.* (*L. Sal.*, tit. 14, 12.)

somewhat more inclusive. Besides the marriage with the mother-in-law, the daughter-in-law, the step-mother and step-daughter, the niece or sister-in-law, it was prohibited also between cousins. Anyone who married contrary to the law lost all his property to the *fisc*.¹ The Visigothic law forbade marriage within the sixth degree,² and the Anglo-Saxon law within the fourth degree.³ The Lombard law prohibited marriages with the wife of the father, with a step-daughter, or with a sister-in-law. Such unions were ordered to be severed at once, the man to pay a fine of 100 sol., and the woman to lose one-half of her property. Children born from such a marriage were illegitimate and could not be made legal heirs.⁴ When Christianity took firm hold among the Germanic people, a spiritual relationship was added. The god-mother and god-father and their near relatives fell within the forbidden degree.⁵

The infamy attached to such marriages is also evident from the history of the period. When the wife of Clovis sought to persuade her husband to permit the baptism of their child, her main argument was that the heathen gods were worthless, that Jupiter insulted women who were his relatives, and committed incest with his own sister.⁶ King Chlotair ordered the son of a mayor domus to be killed because he had married his step-mother.⁷ Ethelbald, the son of King Ethelwulf, married his step-mother, as Asser tells us, "contrary to God's prohibition and the dignity of Christians, contrary also to the customs of all the pagans."⁸ Similar cases are mentioned by Gregory of Tours.⁹

3. The parties to the marriage were required to be free persons. No free maiden could marry a man of the servile classes without suffering servitude or capital punishment. The laws leave no doubt as to the severity with which such alliances were treated. According to the Salic law, a woman following a slave of her own free will lost her freedom.¹⁰ So, if any Frank publicly married a slave, he was to remain with her in servitude permanently.¹¹ Interesting is the Ripuarian law which

¹ *L. Alam.*, tit. 39 ; *L. Bajuuv.*, tit. 6.1.

² *L. Wisl.*, Lib. III, tit. 5.1.

³ *Ethb.*, 12 ; *Cn.*, *Ecc.*, 7.

⁴ *Ed. Roth.*, 185 ; *Liutp.*, 32, 33.

⁵ *Ethb.*, VI, 12 ; *Cn.*, 7 ; *Liutp.*, 34, 6.

⁶ GREG. TUR., II, c. 29.

⁷ FREDEGAR, *Chron.*, c. c. 54.

⁸ ASSER'S *Life of King Aelfred*; *Angl.-Sax. Chron.*, Ann. 616.

⁹ GREG. TUR., III, c. 6 ; V, c. 2.

¹⁰ *L. Sal.*, 14.7.

¹¹ *Ibid.*, 29.5.

provided that if a free woman married a slave, the king or count was to offer her a sword and spindle. If she chose the sword, the slave was slain, but if she took the spindle, she remained in servitude.¹ The Burgundian law provided that both the free maiden and the slave be slain, and if the parents refused to carry out the punishment, the maiden lost her liberty and became a slave of the king.² Among the Goths, if a free woman married her own servant, they were both to be flogged in public and burned at the stake. Should they take refuge in a church, they were to be delivered to the king in perpetual servitude.³ If the free woman married the servant of someone else, or committed adultery with him, they were to receive 100 stripes and be separated. If they persisted in their illegal relations, this punishment was inflicted a second time. For the third time they were to receive 100 stripes each, and the woman was placed in the power of her relatives, and, if they dismissed her, she became the slave of the master whose slave she had married. The children from such a marriage followed the condition of the father. The property of the woman passed to her relatives.⁴ The reason for making the penalty more severe when the woman married her own slave than when she married the slave of someone else is quite evident. The more direct association increased the possibility of such alliances, and the means of prevention had to be more effective. The woman did not lose her freedom when she had been deceived by the master of the slave, the slave being presented to her as a freeman. By this deception the master sought to make her children his slaves; a practice which seems to have been not uncommon. The laws declared that such a master should be infamous, and that the woman and her children should be free, on condition, however, that the deception be proved.⁵ The Lombard law ordered that the slave be slain, and that the maiden could be slain by her parents or sold beyond the province. If the parents neglected to do this within a year, she was reduced to serve as a slave in the king's court.⁶ An edict of Liutprand modified this provision so that, if the slave was not punished within a year, he too became a slave of the king.⁷

4. There is some evidence that in the early period intermarriage with foreigners was forbidden. In his *History of the Gothic War*,

¹ *Quod si ingenua Ripuaria servorum Ripuarium secuta fuerit, et parentes eius hoc contradicere voluerint offeratur ei a Rege seu a comite spatā et conucula. Quod si spatam acceperit, servum interficiat. Si autem conuculam, servitio perseveret.* (*L. Ripu.*, tit. 58, 18.)

² *L. Burg.*, 33.1, 2.

⁴ *Ibid.*, Lib. III, tit. 2.3.

⁶ *Ed. Roth*, 193, 222.

³ *L. Wisl.*, Lib. III, tit. 2.2.

⁵ *Ibid.*, Lib. III, tit. 2.6.

⁷ *Liutp.*, L., 24.

Procopius states that the Rugii, a German tribe, guarded against marriage with foreign women.¹ However, this custom cannot be said to have been common in historic times, and it may be doubted whether there ever was any restriction upon intermarriage between the different Germanic peoples. The repugnance to marriage between blood-relations, and its deteriorating influence, have caused most people to seek foreign alliances, rather than to prohibit them.² This would also seem to have been true of the Germanic people; for they did not exhibit any marks of endogamy. Their physique and rapid increase in numbers argue strongly in favor of exogamy.

From the Lombard laws we learn that if a woman married a Roman, and all the legal requirements were fulfilled, she lived by the Roman law, and her children followed the status of their father. The law implies that formerly, when the wife died, her property reverted to her relatives and could not be inherited by her children.³ As a general rule the children followed the status of the inferior parent. If one of the parents was a Roman, the children were so regarded.⁴ With the advancement of royal power, this general rule became less binding. Regardless of the status of the mother, the children of the Merovingian kings followed the status of the father.⁵

As to the various Germanic nations, intermarriages were frequent, and no disability was attached to them. The Roman, the serf, and the slave were legally inferior, and marriages with them were in disfavor. An alien could not acquire the rights of a free German. This disability disappeared only with the amalgamation of the two races.⁶ The serf or slave could not be admitted to the privileges of the freeman.⁷ Marriages between the servile classes and the free would have weakened, if not deteriorated, the upper class. A free woman marrying a slave and still retaining her freedom would, as a rule, degrade the whole class of free women. This was also true of men, but not to the same degree.

On the other hand, there seems to have been no legal objection to the intermarriage between the noble class and the common freeman. Restrictions between these classes were of a later origin, and the case of the old Saxons cited by Brunner⁸ in contradiction of this statement can hardly be regarded otherwise. The earlier laws contain no traces of such restrictions.

¹ PROCOP., *B. Goth.*, III, c. 2.

² LEIST, *Altarisches Jus Gentium*, p. 396.

³ *Liutp.*, L., 127.

⁴ *L. Ripu.*, tit. 58, 11.

⁵ GREG. TUR., V, c. 20.

⁶ *L. Burg. Add. Pri.*, tit. 13.

⁷ BRUNNER, *D. R.*, p. 46.

⁸ *Ibid.*, *D. R.*, p. 5.

These legal limitations were so many safeguards to protect women as a class, and society as a whole, from the deteriorating tendencies which are ever present in the social body. Incest and marriages with inferior classes were justly regarded as evils which ought to be prohibited by positive law.

When none of these objections were involved, a compliance with the customary formalities was necessary to constitute a legal marriage. The transfer of the *munt* was usually made, but was not essential. The marital rights were not derived from the *munt*. However, if the *munt* was not acquired by the husband, it was retained by her former *munt-walt*, to whom the husband remained responsible, and to whom, in case of death of either wife or children, he had to pay the *wergeld*.¹ While the acquisition of the *munt* was of great importance, marriages were valid without it.² The marriage of Arminius with Thusnelda, the daughter of Segestes, is a case in point. He not only married her without the consent of Segestes, *i. e.*, without obtaining the *munt*, but she had also been betrothed to someone else. Notwithstanding these conditions there is nothing indicating that it was not a valid marriage.³

The ceremony of marriage, as described by Tacitus, is a subject of much uncertainty, and its significance is by no means clearly understood. He says:

It is not the bride who brings the dowry to the man, but the man to the bride. Parents and relatives are present who examine the gifts, which have not been chosen for the enjoyment of the wife nor intended for the adornment of the young bride; but oxen, a bridled horse, and a shield, together with a lance and sword. Upon these gifts the bride is received, and she, in turn, presents the man with some arms. These they believe to constitute the strongest bond, these to be the sacred symbols, the gods of marriage. In order that the wife may not believe herself a stranger to the affairs of her husband and the changing fortunes of war, she is reminded, when she enters upon the consecrated threshold of married life, that she becomes the companion of her husband in his labors and dangers, to suffer and to dare equally with him in peace and in war. This to be the significance of the pair of oxen, equipped horse, and the gift of arms; thus she was to live and thus to die.⁴

The symbolic meaning which Tacitus attaches to the gifts may only be partially correct. He was probably ignorant of the causes of their origin. Whatever may have been the symbolic meaning of them, much

¹ *L. Alam.*, tit. 54.2, 3.

² DARGUN, *Mutterrecht und Raubhe*, p. 27.

³ *TAC., Ann.*, I, c. 55, c. 57.

⁴ *TAC., Germ.* c. 18.

of the ceremony had its basis in the custom of marriage by purchase, which is now generally admitted to have been nearly universal among primitive people.¹ What is of importance in this connection is that it took place in the presence of the *sippe*, and if Tacitus has correctly represented the Germanic ideal of marriage, it was no longer the formal acquisition of a wife by purchase, but a contract based on principles which would be a credit to the highest civilization. In fact, the description of the institution of marriage is so ideal that one hesitates to believe it without qualifications. However, while it may have been overdrawn, it is in the main not inconsistent with what is known of the social life of the people.

That marriage by purchase had been customary among the Germanic people is apparent from traces of it preserved in the laws. The term denoting purchase occurs in a number of instances in the Anglo-Saxon laws in reference to marriage contracts.² The Old Saxon laws granted the privilege of buying a wife to the *lito regis*, but prohibited the sale of a wife thus acquired.³ Later sources contain similar evidence;⁴ and it may be added that among the lowest classes the custom of buying and selling wives is only disappearing in the present century. In England, for example, during the latter part of the eighteenth and the early part of the nineteenth century a number of women were sold at public auction like other commodities.⁵ During all this period it was illegal, but not suppressed.

Marriage by actual purchase or capture had become the exception among the Germans. However, the form was still retained. A sum of money was paid to the father or to him in whose *munt* she happened to be. In the subsequent period this nominal purchase money was turned over to the bride and became her dowry.⁶

The marriage itself was of interest to the whole *sippe*. The relatives of both parties were present at the betrothal and became responsible for the observance of the terms agreed upon. In the laws of King Edmund we have a detailed statement of the procedure, which

¹ J. GRIMM, *R. A.*, pp. 420-22; BRUNNER, *D. R.*, Vol. I, pp. 72, 73; SCHROEDER, *D. R.*, p. 68.

² *Aethl.*, 31, 82; *In.*, 31.

³ *L. Sax.*, tit. 18.1, 2.

⁴ BRUNNER, *D. R.*, Vol. I, p. 74.

⁵ *Annual Register*, Vols. 9, 16, 39, 47, 48, 49, and for the years 1822, 1824, 1832.

It is understood, of course, that these were white and English women, and not slaves nor sold into slavery. The public sale of these women must have been rather common in England, for when in the early part of this century a similar case occurred in the United States, it was denounced as a pernicious English custom.

⁶ SCHROEDER, *D. R.*, p. 299.

has a particular interest because it gives us an insight into the relations in which the bride stood to her *sippe*, and to her husband and his *sippe*.

At the betrothal the relatives of the bridegroom guaranteed his promises, and the relatives of the bride assumed the responsibility to see to it "that no wrong shall be done to her, and that, if she commit a fault, they may be nearest in the 'bôt,' if she have not whereof she can make 'bôt.'"¹ Although these laws were enacted in the tenth century, and possibly varied somewhat from those of the earlier period, the one feature respecting the interest of the *sippe* and its superior guardianship is ancient and purely Germanic,² the same as it was in the time of Tacitus.³

As is evident, the husband did not obtain absolute authority over the wife by acquiring the *munt*. The *sippe* retained certain rights in her, and was responsible for her treatment as well as for her behavior. Should she or her husband be slain, the members of her *sippe* shared in the wergeld; or, if the wergeld was not paid, were in duty bound to revenge the crime. Likewise, should she or her husband commit a crime and be unable to make the required compensation, they were liable for the deficiency.⁴

The price fixed at the time of betrothal was called by various terms, such as *dos*, *meta*, *wittum*, and others.⁵ As long as this was regarded as the price of sale, her *munt-wald* retained the money, but in the later period this conception changed, and either part or all of it was treated as the gift to the bride, of which her husband would have the usufruct during life.⁶ Such a gift, however, could be used for a common purpose during life, and neither relatives nor children could claim it.⁷ The wife herself could not alienate any part of it except in special cases; and among the Lombards only with the consent of the relatives.⁸ The Visigothic law had been considerably modified in this respect. The wife was permitted to dispose of one-fourth of her *dos* if she had children, and all if there were no children.⁹ But this was inconsistent with the ancient custom and proof of the disintegration of the old social order.

¹ *Edm.*, B. 1-8.

² SCHROEDER, *D. R.*, p. 297.

³ *Germ.*, c. 20, c. 21.

⁴ *L. Sal.*, tit. 61; tit. 65; SCHMID, *Gesetze*, p. 395

⁵ SCHROEDER, *D. R.*, pp. 295, 296.

⁶ *L. Burg.*, tit. 14,3; tit. 69,1, 2; tit. 84,2; Add., I, tit. 13.

⁷ *Ripu.*, tit. 37,3.

⁸ *Ed. Roth.*, 205; *Liutp.*, L. 22.

⁹ *L. Wisl.*, Lib. IV, tit. 5,2.

The sum paid to the guardian for the bride seems usually to have been fixed by law or custom. While the laws did not always state the amount, they implied a definite sum, varying among the different people. The Old Saxons set the price at 300 sol.,¹ the Burgundians at 150 sol.

Although the engagement, or *sponsalis*, might be made without the consent of the maiden, there is reason to believe that her wishes were respected. In the laws of King Edmund we have the express statement: "And it be so agreeable to her and her friends."² However, the choice of the maiden could be very much restricted. The father or guardian had it in his power to impose many restraints upon her free choice. Although she might marry without his assent, her husband did not acquire full rights either in her or in the children born from such a union. Her relatives retained all the former rights, and it was only against other persons that his claims in her were valid.³ Should his wife or children die, he had to pay their wergeld to her father or relatives. Nor did he have any claims upon the property of the wife.⁴ While it was therefore not essential to a marriage, it was only through obtaining the *munt* that the husband came into possession of the full legal rights in his wife and children. Before this his rights were limited by those of the *munt-walt*, although against a third party his rights were as complete as if he had acquired the *munt*.

The general checks upon the power of the husband and father have already been indicated. A few examples from the laws will show the specific abuses from which a young woman was protected.

Edict Rotharis, 196, provided that if anyone, except father or brother, gave a woman to a husband against her will, he should lose the *munt*. The Gothic law decreed that brothers should not delay the marriage of a maiden for selfish ends.⁵ In the earlier period the family, or rather the *sippe*, had almost complete control of the rights and privileges of the individual members, and the social ideals of the people determined the limitations upon the independence of the individual, and especially those who were under tutelage.

After the agreement was made, and the price paid or guaranteed by a pledge, the respective parties were under mutual obligations; and heavy penalties were imposed for non-fulfillment of its terms. Nor

¹ *L. Sax.*, tit. 6.

⁴ *L. Alam.*, tit. 54.1.

² *Edm.*, B. 1; *Cn. S.*, 75.

⁵ *L. Wisig.*, Lib. III, tit. 2.8.

³ *Ed. Roth.*, 187; *L. Alam.*, tit. 51.1, 2.

were the laws less severe if the contract was invalidated by the action of anyone else. For marrying the bride of another man the Salic law decreed a penalty of $62\frac{1}{2}$ sol., and 15 sol. to the injured man.¹ Should anyone take a bride by force and violate her while on the way to her husband, the punishment was 200 sol.² If the man refused to receive the maiden after she had been betrothed to him, he was fined $62\frac{1}{2}$ sol.³ The Alamanian law imposed a punishment of 200 sol. if anyone accepted the bride of another man. Besides, the bride had to be restored; and, should she not be returned, the fine was doubled, *i. e.*, made 400 sol. If, moreover, she died while in his power, he solved her with 400 sol.⁴ When a man refused to receive the maiden to whom he was betrothed, he was compelled to make satisfaction with 40 sol., and swear with twelve witnesses that he rejected her for no other reason than his love for another woman.⁵ This latter provision is also found in the Bavarian law, except that the compensation was only 24 sol. instead of 40 sol. And, among the Bavarians, if anyone carried off the bride of another and persuaded her to become his wife, he was to return her and pay a fine of 160 sol. The Burgundian law provided that, if the woman broke the promise, she was to pay 300 sol. to the injured man, and the man who married her had to prove that he was ignorant as to the engagement at the time he married her; otherwise he would be severely punished.⁶ According to the law of King Aelfred, if a betrothed woman committed adultery, she paid a fine of 60 shil., if she was of "ceorlish" degree; 100 shil., if of "six-hynde" degree; and 120 shil., if of "twelve-hynde" degree.⁷ Even more severe were the penalties in the Visigothic laws. If the betrothed maiden, against the will of her parents, took another man than the one to whom she was betrothed, both she and her husband were placed in the power (*potestas*) of the injured man; and if her brothers, mother, or other relations were implicated, each was to pay a pound of gold to the king.⁸ The Lombard laws decreed that if a man did not marry the maiden within two years after she was betrothed to him, he was fined a sum equal to the *meta*, the price for the *munt*. The *meta* became the property of the maiden, and subsequently the father or *munt-walt* was free to give her to another husband.⁹ If anyone married a maiden or widow betrothed to someone else, the maiden or widow consenting, he paid 20 sol. to whom the *munt* pertained, a fine of 20 sol. and double the

¹ *L. Sal.*, 14.8, 9.

² *Ibid.*, 14.10.

³ *Ibid.*, tit. 70.

⁴ *L. Alam.*, tit. 52.1, 2.

⁵ *Ibid.*, tit. 53.

⁶ *Burg.*, tit. 52.

⁷ *Aelf.*, 18.

⁸ *L. Wis.*, Lib. III, tit. 1.2.

⁹ *Ed. Roth.*, 178.

meta to whom she had been formerly betrothed.¹ Should anyone carry off (*rapuerit*) a maiden or widow with her consent, who was betrothed to another man, the penalty was 900 sol., half of which was paid to the *munt-walt* and half to the king. To the injured man he had to pay the double *meta*.² When the relatives were responsible for the breach of promise, they were compelled to pay the double *meta*.³

In all these cases, it must be remembered, there were no legitimate causes for breaking the engagement. For valid reasons, whether it was so expressed in the laws or not, the compact could be broken; but, as the Lombard law just mentioned put it, "only if there was an unavoidable cause." Adultery, for example, was a sufficient cause. However, if the bridegroom accused the bride of this crime and she was able to clear herself, he was compelled to accept her for his wife or pay twice the *meta* agreed upon. But if the crime was proved he received the things which he had given and she suffered the penalty of adultery.⁴ Leprosy, insanity, and blindness were other legitimate causes on account of which an engagement might be broken.⁵

In addition to the information furnished by the laws, a few instances from the history of the times may be noted here. When Theodebert, king of the Franks, had deferred the marriage with Deoteria, to whom he had been betrothed for seven years, the Franks assembled and reproached the king because of the treatment of his bride; and, as a consequence, the king married her.⁶ Procopius relates a rather doubtful tale about the king of the Warni who had broken an engagement with a princess of Britain. The princess, at the head of a large army, invaded his country and compelled him to marry her.⁷

The *sippe*, which was the strong conservative organization of the primitive Germanic society, was much weakened by the economic and social conditions in which the Germans found themselves subsequent to the great migrations. Its influence declined, and the paternal power became more prominent.⁸ This change is especially noticeable in the Lombard laws. The powers of the father or brother in disposing of the hand of a daughter or sister seemed to be more absolute than in the earlier period. However, if the *munt-wald* was neither father nor brother, his powers were carefully restricted by law.⁹ Yet it is not at

¹ The *meta* was the sum which was to be paid for the *munt* and had been agreed upon when she was first betrothed. (*Ed. Roth.*, 190.)

² *Ed. Roth.*, 191.

³ *Ibid.*, 192.

⁴ *Ibid.*, 179.

⁵ *Ibid.*, 180.

⁶ GREG. TUR., III, c. 7.

⁷ PROCOP., *B. Goth.*, IV, c. 20.

⁸ BRUNNER, *D. R.*, Vol. I, p. 222.

⁹ *Ed. Roth.*, 195, 196.

all clear that the father or brother could act entirely independently of the *sippe*; for, although the *sippe* had evidently lost its importance among the Lombards, its collective interests were still sufficient not to be indifferent in regard to family alliances.¹ The *fideiussores*,² those who guaranteed the fulfillment of the agreements made at the time of the betrothal, presumably still exercised a strong influence both as to the disposition of the maiden and her future treatment.³ The rights of the relatives in the maiden were only second to the father, brother, or husband, if either of them possessed the *munt*. The relatives could protect her against the abuses of her *munt-wald*, if he was not her father or brother. If she was mistreated, the *munt* would revert to them, and, if there were no legitimate kin, to the king.⁴ In the Lombard laws the paternal power had reached its extreme development; but, while it would appear from some of the provisions of the law that this power was unlimited in disposing of the hand of the daughter, yet the restraining influence of the *sippe* must not be overlooked in this connection. From a formula to *Edict Roth.*, 182, we learn that the consent of the woman was also essential to a legal marriage contract. This was a case of a second marriage, but her consent was probably required in every case where the woman was not given in marriage by the father or brother; and restrictions on them, as far as there were any, existed in custom and not in the written law.

Special provisions were made as to the maintenance of the wife. The *phaderfium*, the gift from the father, the *morgengabe*, the gift of the husband made on the morning after the marriage, and the *exenio*, the gift from the friends, constituted the property of the wife, but was not, as a rule, under her control during the life of her husband.⁵ These gifts became so large among the Lombards and Visigoths that they proved ruinous to those who made them, and laws were enacted fixing the maximum amount of property which it was permitted to sign over to the wife. The *morgengabe* among the Lombards could not exceed one-fourth of the possessions of the husband,⁶ and among the Visigoths one-tenth of the property of her husband. Besides this, the nobility could make a gift of ten men and ten maid-servants, thirty horses, or ornaments to the value of 1,000 sol.⁷

¹ *Ed. Roth.*, 153, 182.

² *Ibid.*, 188, 189.

³ BRUNNER, *D. R.*, Vol. I, p. 222.

⁴ *Ed. Roth.*, 182, 184, 195, 196.

⁵ *Ibid.*, 182, 189; SCHROEDER, *D. R.*, p. 302.

⁶ *L. Liutp.*, 7.

⁷ *L. Wisl.*, III, tit. 1.5; SCHROEDER, *D. R.*, pp. 303-5.

It is not the purpose here to enter into the detail of this question, but merely to show the favorable provisions made for woman, which gives us somewhat of the spirit of the people as manifested in these customs, and emphasizes what has been said in regard to the treatment of woman in general; and also to show that, where the laws seem to give despotic power to the husband or father, the peculiar family organization, as well as the spirit pervading the social life of the people, was a check upon the abuse of that power.

The laws indicate only in part the real life of the people. There were frequent exceptions to the general rule. When Clovis, king of the Franks, desired the hand of a Burgundian princess, he made his wishes first known to the princess, not to her *mund-wald*; and only when he had obtained her consent did he make the formal request.¹ Arminius, the great leader of the German uprising against the Romans in 9 A. D., had married the daughter of Segestes, not only against her father's wish, but she had been betrothed to another man. While it was a cause of bitter enmity between him and his father-in-law, the daughter of Segestes had evidently been in favor of Arminius from the beginning, and proved ever faithful to him, in spite of the hardships and abuse which she suffered in consequence of it.² The Queen Theudelinde offered herself to one of the nobles.³ The daughter of Charles Martel, instigated by her step-mother, secretly and by the help of servants crossed the Rhine and went to the duke Odilo of Bavaria, who married her without the knowledge and against the will of her brothers. The widow of King Charibert offered her hand to King Gunthram.⁴ Still more recklessly and independently acted the queen of Thuringia, who, according to tradition, left her husband and followed Chilperich, king of the Franks, who had spent some time in exile in Thuringia. Her reason was that he was the best and bravest man she knew.⁵ This is tradition, but nevertheless it is not without value in pointing out some striking characteristics.⁶ There were many instances in which woman had apparently no voice in the selecting of her husband;⁷ but that has always been true in actual life, if not in law; and it must be conceded that some of the Germanic

¹ *Sagen aus der Geschichte der Frankenkönige*, c. 11, c. 12; FREDEGAR, c. 18.

² TAC., *Ann.*, I, c. 55.

³ *Hist. Long.*, III, c. 35.

⁴ *Fortsetzung*, FREDEGAR, c. 25.

⁵ FREDEGAR, c. 12; *Sagen Chron. der Fr. Kg.*, c. 14; GREG. TUR., II, c. 12.

⁶ GREG. TUR., IV, c. 26.

⁷ *Ang.-Sax. Chron.*, *Ann.* 853, 924, 1022; PROCOPI., *B. Goth.*, I, c. 11; ISIDORIUS, *Hist. Goth.*, c. 33; *Hist. Sue*, c. 90.

maidens acted with a spirit of independence not surpassed in modern times.

Especially repulsive to us is the custom of forcing woman to marry a conquering enemy, or even the slayer of her father or brother, which seems to have been not at all uncommon.¹ Then, also, with the increase of the royal power, marriages were dependent on the royal will, but this abuse was a development of the Middle Ages and not an ancient custom. The royal mandate was not accepted as binding in the earlier period.² This was especially forbidden by a capitulary of 560 A. D.³

Obviously in the Germanic society, as in all societies, there were many exceptions to the rules of law, and in respect to marriage alliances much depended upon the individuality of the parties in question. The greatest independence was varied by the most complete submissiveness. However, there was a characteristic self-reliance and independent initiative on the part of woman which must be noted as a striking feature indicative of the social position of woman, and the positive and active influence exerted by her.

Plainly, the laws and customs guarded her against immoral influences, and protected her from deception and corruption. She was not permitted to degrade herself willfully by marrying a slave or by living a life of shame. The security which a barbarous age could grant was hers, but only while she lived a life consistent with her position and in conformity with the social idea of womanhood.

¹ *Fortsetzung*, FREDEGAR, c. 12; GREG. TUR., III, c. 7; *Hist. Long.*, III, c. 8, I, c. 27; JORDANUS, *Hist. Goth.*, c. 48.

² GREG., TUR., IV, c. 46; *Ang.-Sax. Chron.*, Ann. 1015; PROCOF., *B. Goth.*, I, c. 11.

³ *Corpus Juris Germ.*, Vol. II, p. 2.

CHAPTER V.

THE STATUS OF WIFE AND MOTHER.

THE men, among the ancient Germans, spent much of their time in warfare and hunting. The rest of it was passed in lazy indolence, or was devoted to gambling, feasting, and politics. Women and children were intrusted with the seemingly more difficult task of caring for the home and field.¹ From a modern point of view, the position of woman, looked at in this light, is not to be envied, nor is it, apparently, consistent with the statement that the Germans believed their women to possess somewhat of the divine. Under present economic conditions the position of woman would have been intolerable; she would indeed have been a servile drudge. But it must be remembered that an entire revolution has since taken place in our economic life. Their mode of living was extremely simple, their wants few. The greater part of sustenance came from hunting and live-stock.² Agriculture, although rapidly increasing, was still quite limited at the time of Tacitus, and was partly carried on by serfs and slaves.³ The task was, therefore, not such a difficult one, nor was it unnatural that woman should perform it, since she and those unable to bear arms could at all times remain at home. Man was ever an uncertain quantity. War would force him to be away from home, and the chase might occupy his time when the fields had to be tilled and the grain harvested; and therefore this work had of necessity to be undertaken by those who remained at home.

The home-life and the occupations of stable settlements were naturally first developed by women,⁴ with the result that, as agriculture increased and superseded the pastoral and hunting life, the lot of woman tended to become harder.⁵ Tacitus noticed, and was unable to explain, the extreme contrast in the lives of the Germans.

¹ TAC., *Germ.*, c. 14, c. 15, c. 22, c. 25.

² CAE., *B. G.*, VI, c. 22; TAC., *Germ.*, c. 23; POMPONIIUS MELLA, Lib. III.

³ TAC., *Germ.*, c. 25.

⁴ ELLIS, *Mann u. Weib*, p. 324.

⁵ The conservative tendencies in human nature, habit and custom, are ever opposed to a change of occupation and not infrequently the cause of an unequal division of the burdens of life between the sexes. The occupation which at our time is merely incidental and requires but little labor may become with the changing economic conditions the most important, and consequently entail hardships upon those who were originally engaged in it. The readjustment of labor-forces is a slow process, and especially so in primitive society and when a division of labor between the sexes is involved.

Periods of the most intense activity were followed by absolute relaxation and indolence. To Tacitus this seemed most unnatural; yet, from a physiological point of view, this was a necessity, and partly accounts for the fact that in primitive society women, children, and the aged seem to perform all the labor, while in reality, in the periods of indolence, the men were storing their strength and energy for the intense exertions which the chase and war required, and without which they could not have endured the hardships they were compelled to undergo. With the increase of agriculture all was changed. Woman's labor increased until the labor forces began to readjust themselves. The hesitation with which one sex assumes the work which has long been performed by the other may be observed in our own day.

There is, however, another point of view which deserves notice. If the wife was intrusted with the affairs at home, she would also be practically the governing head there. She would not only assist in doing the work, but supervise and command how it should be done. The significance of this is at once obvious. Self-reliance and independence would be essential to the performance of her duties. The children would be subject to her will and training, and be educated to respect her authority and to seek her advice and counsel throughout life. This would partially account for the influence she had with men, and why they should regard her praise the highest honor and her reproach the greatest disgrace.¹ It was the important position in the home which made her a positive force in the organized life of the people.

In the relations of husband and wife she held the position, not of a subordinate, but of a companion who shared in his work and his dangers, and who expected to suffer and to dare equally with him all that he suffered and dared both in war and in peace.² Whatever may be said as to the powers of the husband, and notwithstanding that, as far as property rights were concerned and in external representation, the wife was dependent on him, in the home she stood in many respects on an equality with him, and even possessed greater rights. As already mentioned, among the Frisians only the mother could destroy the life of the newborn infant.³ From the *Lex Salica* we learn that the mother had equal power with the father in reference to measures affecting the children. The consent of the mother was as essential as that of the father.⁴ When this distinction was not made, the term *parentes* was employed, denoting frequently both parents, as well as the nearest relatives. It is rather remarkable to notice how infrequently the earlier

¹ Tac., *Germ.*, c. 7² *Ibid.*, c. 18.³ *L. Fri.*, tit. 5.1.⁴ *L. Sal.*, tit. 28.3.

laws speak of the father as having sole power—a fact which is usually overlooked in discussing the power of the husband and father. In the home affairs the mother had a decisive voice, and her kin had even more influence there than those of the father. The sons of a sister were held in as high regard by the uncle as by their father. By some the maternal relationship was deemed more sacred than the paternal, and hostages from them were considered a better guarantee of friendship and more binding upon the whole *sippe*.¹ In the laws the maternal kin stood on an equal with the paternal,² and in the succession to the property of the parents the sister of the mother preceded the sister of the father.³ It was only when there was none of the nearest kin that the paternal relatives had the exclusive right of succession.⁴ The sister of the mother also preceded the sister of the father in the Ripuarian law.⁵ According to the Frisian law, the wergeld was paid either to the father or mother or brother or sister, placing them precisely on an equal.⁶ These examples suffice to show that the rights of the wife were not entirely merged in those of her husband; her rights were in some instances quite distinct, in others coördinate with those of her husband; while her kin, through her, had in some instances greater claims upon the family than those of the father.⁷

In the external relations of the family she was, however, dependent on her husband, who was the legal head and represented the unity of the family. As a rule, laws did not recognize women as capable to act in their own right. In common with the other Aryan races, the agnatic principle was in this respect predominant, and the restriction on the power of the husband lay more within the family and *sippe* than in the common law. In actual life, as we have seen, this legal disability of women did not exclude them from playing a prominent part in the social and political affairs of the people; and in pagan times she seems to have had a large share in their religious life, performing sacrifices and sacred rites.⁸ The subjection to the *munt* did not prevent her from entering into all the affairs of her husband, to make her consent decisive in family measures, to exert her influence freely, and to take an active part in public matters.

Much more perplexing is the question of conjugal obligations. The sweeping assertion that among the ancient Germans the wife had

¹ TAC., *Germ.*, c. 20.

² *L. Sal.*, tit. 57, 61, 64.

³ *L. Sal.*, tit. 62.3.

⁴ *Ibid.*, tit. 62.5.

⁵ *Ibid.*, tit. 54.3.

⁶ *L. Fri.*, tit. 19.2.

⁷ *L. Sal.*, tit. 47.

⁸ J. GRIMM, *D. M.*, Vol. I, p. 77.

no claim to the fidelity of her husband¹ cannot be fully maintained. Legally, the husband was punished for adultery because of the injury to a third person, and not because of a breach of marital obligation. Adultery committed by the wife was severely punished, and was a valid cause for divorce; but the wife could not claim such a privilege against her husband. The Burgundian law, without any qualifications, provided that if any woman dismissed her husband to whom she was legally joined, she should suffer death by drowning.² A husband, on the other hand, might dismiss his wife without cause, involving him only in a material loss. He was compelled by law to pay her a sum of money equal to the amount he had originally given for her *munt*, and, besides, a fine of 12 sol.³ Adultery, malfeasance, and the violation of the sepulchre were recognized as legal causes for which a man could divorce his wife. If he dismissed her for any other cause, she could take all her property and also claim the children.⁴ In a capitulary of 752 A. D. it was decreed that a husband whose wife had been conspiring with other men to take his life might divorce her and take another wife, but she should remain without the hope of remarriage.⁵ The English laws of King Aethelberth seem to indicate less stringent rules in regard to divorce, although the brevity of the laws leave it rather obscure. After providing as to what constituted a valid marriage contract the law states that

If she [the wife] bear a live child, let her have half the property, if the husband die first. If she wish to go away with her children, let her have half the property. If the husband wish to have them, let her portion be as one child.⁶

The law itself implied no restrictions upon the wife as to leaving her husband, and merely settled the right of each in the property and children. Similar to the Burgundian laws were those of the Visigoths, adding, moreover,

That no one shall be permitted to marry a repudiated wife, and anyone who does so shall, together with the wife, be given over into the power of her former husband.

If the husband dismissed his wife unjustly, he lost all the property he had granted to her. By a later law adultery alone was recognized as a legal cause for divorce, and both parties were forbidden to remarry.⁷

¹ DAHN, *Urg. d. Germ. Röm. Völker*, Vol. I, p. 37.

² *L. Burg.*, tit. 34.1.

³ *Ibid.*, tit., 34.2.

⁴ *Ibid.*, tit. 34.3, 4.

⁵ *Cor. Jur. Germ.*, Vol. II, p. 33.

⁶ *Ethb.*, 78-80.

⁷ *L. Wisi.*, Lib. III., tit. 1.2.

Among the Lombards the penalty was 500 sol. for a man to dismiss his wife without a cause, and the loss of the *munt*. If a man accused his wife of a crime and was able to prove it, he was absolved from all punishment; but if he could not prove it, the law required him to pay the wergeld of the woman, an amount equal to the one demanded if he had slain her brother.¹ To dismiss a wife without a valid reason was looked upon with more leniency than a dishonest attempt to find some subterfuge and taint the honor of the wife. The Salic and Ripuarian laws provided only for the case where anyone took the wife of another while her husband was still living, and for this the penalty was 200 sol.² It is unfortunate that the law is not more explicit and does not enter into any details as to the status of the woman, and make it clear whether it was with or against her consent, and whether she was a divorced woman, or one who was persuaded by the second man to leave her husband. In view of the other Germanic laws it would seem that the former was assumed in the provision. However, this point is not clear, and the supposition is merely one of probability. The Frisians imposed a penalty for taking the wife of another at three times 53½ sol., *i. e.*, three times the wergeld, and another wergeld had to be paid to the king *pro freda*. The English law of Aethelberth treated of a somewhat similar case: "If a freeman lie with a freeman's wife, let him pay for it with his wergeld; and provide another wife with his own money and bring her to the other."³ The Alamanian laws contain corresponding provisions: "If any freeman take the wife of another contrary to law [*contra legum*], he must pay in satisfaction 80 sol., and return her." Should he not wish to return her, 400 sol., if her former husband willed it. If the woman should die, he solved her with 400 sol.⁴ If a husband dismissed his wife, he paid in satisfaction 40 sol., and returned to her all things which were hers according to law.⁵ Among the Bavarians, if a man dismissed his wife, the penalty was 48 sol.; besides, the law required him to pay her *dos* according to her rank (*secundum genealogum*) and also to return all that she had received from her parents.⁶ By a later decree of Tassilo adultery was recognized as a legitimate cause of divorce, and a severe penalty was imposed upon any cognate who caused any action to be taken against the husband.⁷

In all the laws, then, as is evident from this brief survey, there was a strange lack of protecting woman from being divorced arbitrarily

¹ L. GRIMM., 6, 7.

² L. Sal., tit. 16.1; L. Ripu., tit. 35.1.

³ Ethelb., 31.

⁴ L. Alam., tit. 51.1.

⁵ Add., 30.

⁶ L. Baju., tit. 7, cap. 14.1, 2.

⁷ De Popul. Leg., 17.

and without cause by her husband. Only in the Visigothic laws were the husband and wife placed more on an equal in this respect. But those laws were of a later period, and were influenced by the Roman laws. Except the Burgundian, none of the laws provided any punishment for the wife who dismissed her husband. They do not even suggest such an eventuality. The reason was, undoubtedly, that the whole question was left to be settled by the *sippe*. Curiously enough, the early Anglo-Saxon laws seemed to indicate no penalty whatever. Apparently the wife might leave her husband if she desired to do so. It was only a question as to the division of the property and the possession of the children. And, again, if adultery was committed, the law named no punishment for the wife, but imposed upon the adulterer the obligation of buying the wife for himself and another one for the injured husband, presumably in each case paying the customary price to the *munt-walt*. The severity of some of the laws, and the apparent indifference of others, can only be explained by the fact that the laws aimed at a method of settlement not necessarily compulsory; just as in case of homicide, the laws providing the wergeld did, probably, not exclude private revenge. The mutual agreement of the parties was necessary to make the laws effective. As far as the laws indicate, the relations between husband and wife were, in a far greater degree, a matter of private settlement. In the decree of Tassilo, already cited, there is unmistakable evidence that if a man dismissed his wife without cause her relatives could take measures to punish him; for the law forbids such measures only in case of the wife having committed adultery.

These statements are, in part at least, confirmed by historical evidence. The observations of Tacitus especially give a clearer meaning to them. In his account concerning the social purity of the Germans he emphasized that adultery occurred but seldom among this numerous people; that the punishment was intrusted to the husband in the presence of the relatives; and that the unfaithful wife, deprived of her hair and disrobed, was expelled from the house and flogged through the entire village. There was no pardon for lost innocence. Neither beauty nor youth nor riches enabled the fallen one to obtain another husband. All her hopes were to center in one husband, so that in him she did not love the husband but the marriage state.¹ The punishment was left to the *sippe* and husband. There is no hint that the adulterer was punished, and this probably has given rise to the theory that the wife had no claim to the fidelity of the husband. But a

¹ TAC., *Germ.*, c. 19.

moment's reflection is sufficient to see that whether the wife, by law or custom, had such a claim or not, conjugal fidelity must have been mutual. It is difficult to conceive of a state of society in which men are libertines and women alone are chaste. For, as Tacitus writes, "no one laughs there at vice, nor is it called fashionable to corrupt and be corrupted." In the later history frequent cases of adultery are mentioned, but there is also no lack of evidence to show the social condemnation of infidelity on the part of man.

A remarkable feud, described by Gregory of Tours, gives us a valuable insight into family affairs, and shows that the husband could not with impunity neglect his wife. A man among the Franks at Turnay was known to have illicit intercourse with other women. At first the brothers of this man's wife remonstrated with him, and when this was of no avail, they killed him. The feud resulted in the killing of a great number of the relatives of both.¹ This case has a special significance, since we know that the Franks at Turnay still preserved their old-time customs, and were, as it seems, still pagans; for from the life of St. Eligius we learn that he was sent to this and adjoining places because the "inhabitants were still in the delusions of paganism, and, like the beasts of the forests, did not receive the word of salvation."² Other historical instances show the condemnation and punishment for violating the honor of woman. Theudichus, the king of the Visigoths, was killed for open adultery.³ Protadeus, the paramour of Queen Brunhilda, likewise suffered death.⁴ The bishop of Lisieux and a woman were condemned to death for adultery. The woman was burned, but the bishop escaped.⁵ An abbot discovered in adultery was slain, together with the partner of his crime, by the injured husband, and there is no evidence of any penalty attached to such an act.⁶ King Childerich lost his kingdom because of his licentious life, corrupting the daughters of the Franks. He fled to the court of the Thuringian king, and, although he was later permitted to return, it shows that the social condemnation of such a life was so strong that even the most powerful did not escape punishment.⁷ King Kenwealth, one of the English kings was deprived of his kingdom by Penda,

¹ GREG. TUR., X, c. 27.

² *Vita Lib.*, II, c. 2.

³ ISIDORUS, *Hist. Goth.*, c. 44.

⁴ FREDEGAR, *Chron.*, c. 24, c. 27.

⁵ GREG. TUR., VI, c. 36.

⁶ *Ibid.*, VIII, c. 19.

⁷ FREDEGAR, I, c. 11; *Sagen aus d. Chron. d. Fr. Kg.*, c. 6; GREG. TUR. II, c. 12.

because he had forsaken his wife, the sister of Penda.¹ Gregory of Tours relates a story which is instructive in showing the Germanic spirit in the midst of the Roman population. A certain Vested had slain Lupus and Ambrosius out of love for the wife of the latter. Subsequently he had married this woman, who was said to be his aunt. For these criminal acts he was killed by the servant of a Saxon, Childeric by name. It would appear that it was the Germanic disapproval of such reckless and vicious disregard of family obligations and the most sacred human relations which led the Saxon to the deed. He avenged his injured sense of justice, even at the risk of making himself liable to the payment of the wergeld.²

The guilt was not always confined to the husband, but, as in some of the foregoing examples, was shared in by the wife involved; and, at times, she alone was the offender. A few cases of this nature will give us an insight into the legal methods employed to bring the culprit to justice. In Paris a woman had fallen under the suspicion of having committed adultery. It was also said that she had deserted her husband. The husband himself did not bring the complaint, but his relatives took up the case. They went to the father of the wife and informed him that he either must clear her or else she must die. The father assured them that he would be able and willing to exonerate her. The case came up in court, but ended in a conflict between the parties, and no settlement was arrived at. A few days later, however, the woman committed suicide by hanging.³ The part which the relatives played in this case, and the shame and disgrace which was attached to a life under the suspicion of adultery, as evinced by the action of the wife in taking her own life, indicate the common family interest on the one hand, and a keen sense of social purity on the other. Another interesting case is mentioned by Gregory. A man who was called Eulalius appeared before King Gunthram to accuse his wife. He complained that she despised him, and had deserted him, and was living with another man. "But," says Gregory, "he was laughed at; and, covered with disgrace and shame, he remained silent."⁴ The cruel and sarcastic indifference to this wronged and hapless man was perhaps partly due to the fact that he was a Roman, as his name implies, but probably more to the Germanic custom which left family affairs to be settled by the judgment of the *sippe*; or, at least, left the initiative to the *sippe*. Good old King Gunthram was too much of a German to appreciate

¹ *Ang.-Sax. Chron., Ann.* 658.

² *GREG. TUR., VII, c. 3.*

³ *Ibid., V, c. 32.*

⁴ *Ibid., VIII.*

the Romans' methods of obtaining justice or to meddle in private matters which, according to the Germanic idea of legal process, should first be considered by the relatives of the respective parties to the case.

These cases are insufficient to furnish the proof for a conclusive statement; but they are suggestive of the feeling of the people in regard to conjugal obligations. They present us glimpses of real life, the sense of justice expressed in respect to specific cases; and in these cases we find no confirmation of the view that the wife had no claim to the fidelity of her husband. The customs which governed the family organization imposed restraints upon licentious men, and furnished means of redress to an ill-treated wife. Not only was there a strong feeling against the man or woman who disregarded the natural obligations of marriage, but also the husband, as well as the wife, was held to a strict account by the relatives of either.

That these customs were not always heeded, that their infringement frequently remained unpunished, cannot be denied. Indeed, it would be strange if it had been different in that period of general social disorganization, subsequent to the great migration. It was only in the old family relations that the passions of man found a check. When these were broken there was little restraint. Various provisions in the laws, especially the Lombard laws, defining the status of natural children, is evidence that illicit relations between the sexes existed to such an extent that it called for legislation to ameliorate the condition of illegitimate children. Among the ruling classes we meet often with polygamy and concubinage. Then, too, legitimate wives were at times displaced by favorite mistresses without redress. However, we must remember that the extraordinary, rather than the ordinary, is recorded; and what is said of princes and rulers can only to a limited extent be relied upon as indicating the practice of the common people. As we have already seen, some of the kings suffered at the hands of the people because of their licentious lives. The Merovingians, who were possibly the worst of all the ancient Germanic kings, made themselves hated by the Franks because of their immorality.

Neither polygamy nor concubinage was condoned.¹ The statement of Tacitus that the Germans alone of all the barbarians were content with one wife, except in cases of some leading men, was also in the main true in the later period.² Of the early Germanic chiefs only Ariovistus is reported to have had two wives,³ and the infrequency of polygamy was noted by Tacitus a century and a half later. But

¹ J. GRIMM, *R. A.*, p. 440.

² TAC., *Germ.*, c. 18.

³ CAE., *B. G.*, I, c. 53.

from the fifth century A. D. cases became more numerous. Samo, a Frank who lived among the Slavs, we are told, had twelve wives, but it is especially stated that they were all Slavs.¹ King Dagobert had three queens and innumerable concubines.² Charles Martel was an illegitimate son of Pepin.³ Geiserich, king of the Vandals, was also a bastard.⁴ King Chlothair had a number of wives,⁵ and King Charebert had several concubines.⁶ Grimoald, the mayor domus,⁷ and King Theuderich⁸ as well as Theudebert,⁹ had concubines. Even the "good king" Gunthram was not an exception.¹⁰ Gisulich, king of the Visigoths, was a bastard;¹¹ so also was Theoderich, the Ostrogoth,¹² who in turn had a number of natural children.¹³ The failings of Charles the Great are too well known to need mention here. There is also evidence that some women in high places were equally loose in their morals. Queen Brunhilda had her paramour. One of Charibert's queens offered herself after the death of her husband to his brother, Gunthram; and the wife of Count Eulalius eloped with Desiderius.¹⁴

From an enumeration of these cases one is apt to infer that the whole society was demoralized, that the purity of the ancient Germans was a myth, and had no existence in fact; but this would be a mistake. There was unquestionably a constant tendency toward greater freedom from restraint in this respect. New social and political relations, as well as the immoral influences with which the Germans were brought in contact, could have no other result; and the social purity of the early period cannot be asserted of the sixth and seventh centuries; yet a comparison of the rulers of this period with those of western Europe in the seventeenth and eighteenth centuries would be much in favor of the former. It may also be suggested here that even in the most civilized nations at the present time the illegitimate children constitute a large per cent., reaching in some parts of Austria 47 per cent. of all children born.¹⁵

Some of the laws in reference to this phase of conjugal relations have been noticed already. In general, the laws treated adultery as one of the gravest offenses; and, if the adulterer was

¹ FREDGAR, c. 60.

² *Ibid.*, c. 60, c. 61, *Chron.*, c. 59.

³ *Gesta Francorum*, c. 48.

⁴ PROCOP., *B. V.*, I, § 3.

⁵ GREG. TUR., IV, c. 3, c. 9.

⁶ *Ibid.*, IV, c. 26.

⁷ *Fortsetzung*, FRED., c. 6, c. 7.

⁸ FRED., *Chron.*, c. 24.

⁹ GREG. TUR., III, c. 22, c. 23.

¹⁰ *Ibid.*, IV, c. 25.

¹¹ PROCOP., *B. Sue.*, I, c. 12.

¹² JORD., *Hist., Goth.*, c. 52.

¹³ *Ibid.*, c. 58.

¹⁴ GREG. TUR., VIII, c. 45.

¹⁵ This high percentage in Austria is partly due to laws regulating inheritance. Twelve per cent. is about the average of illegitimate children in western Europe.

slain, no penalty was imposed upon the slayer. The Frisian law mentioned the adulterer among those who might be slain without punishment.¹ A decree of King Childebert ordered those who committed rape to be slain, and if the woman had consented, both were to be slain and their goods given to their relatives (*parentibus*).² The law of King Aelfred provided that a man might fight without punishment if he found another with his lawful wife within closed doors or under one covering, or with his lawful-born daughter, or with his lawful-born sister, or with his mother who had been given to his father as his lawful wife.³ The marriage of a divorced woman was forbidden by the laws of Ethelred.⁴ Those who had illicit intercourse with a nun were not to be buried in consecrated ground, any more than a man-slayer. The same was ordained in respect to adultery.⁵ Separation from communion with the church was also one of the penalties.⁶ A "gesithcund" man had to make *bôht* of 100 shil. to his lord for illicit intercourse; and a "ceorlish" man was fined 50 shil., according to ancient usage.⁷

If a woman committed adultery during her husband's life, she lost all her property to her husband and forfeited her nose and ears.⁸ If a married man lay with his own maid-servant, he was to forfeit her and also make *bôht*. If he had a concubine besides his lawful wife, he was excluded from the communion of the church.⁹ It is evident that the wife was treated much more harshly than the husband, and this was in accordance with the Germanic idea of justice. The reason has already been noticed.

One other feature of the laws should be noted here. It is the frequent injunction to the lower clergy to live chaste and moral lives. They seem to have often lived in concubinage, and apparently claimed it as their privilege.¹⁰ Such practice was probably not extensive in the early Middle Ages; and it is difficult to determine whether the rules and regulations of the church, such as enforced celibacy, which subsequently became a source of immorality, were responsible, or whether it was the low moral state of society in which these men shared. One thing, however, is clear: the influence of their example could not be otherwise than harmful. Especially so, since they were a privileged class. While men in secular life were deterred by fear of punishment, those in the service of the church were exempt from the severer penalties.

¹ *L. Fri.*, tit. 5, 1.

⁴ *Ibid.*, § 12.

⁷ *Ibid.*, 1, 2.

² *Decretio Childeberti Regis*.

⁵ *Edm.*, § 4.

⁸ *Cn. S.*, § 54.

³ *Aelf.*, § 42.

⁶ *Withred*, § 3.

⁹ *Ibid.*, § 55.

¹⁰ *ETHEL.*, C. A., 5; *L. Wisi.*, Lib. III, cap. iv, 18; *L. Baju.*, tit. I, cap. 13.

In this last fact lay a grave social danger, and this is the only justification for referring to it here. Women were more subject to the influence of this class than any other, and the means of protection against this influence were inadequate. Whatever affected the moral status of woman affected the family and home-life, and the influence of the wife and mother there. It was only by living in conformity with the strictest and highest ideals of life that she could retain the place of esteem and honor of the earlier period. But this could not be expected when the teachers and guardians of social morality lived in violation of their profession. It is one of the corrupting and corroding evils which marred family-life in the Middle Ages, and contributed directly to making woman that sinful and inferior being which, according to the doctrine of the church, she was.

The life of the wife and mother in the home was not without its shadows. The inherent evils of human nature, accentuated by circumstances, were also present in the private life of the ancient Germans. But, notwithstanding, we meet there with a youthful idealism and a healthy and wholesome relationship which not only deserved the admiration of ancient writers, but might well be emulated in modern life. The wife was the companion of the husband in all things, in his thoughts and in his deeds, in his sorrows and joys. She was the center of the home and family, and there her influence was paramount. To the children she personified the guiding wisdom of life, and in decisions relating to their welfare her authority was not inferior to that of the father; and as to the newborn child, its life or death depended on her will. Her husband was her protector, her representative in external relations, and that protection was enforced by her *sippe*, who also guaranteed her privileges and obligations when the husband failed or was unable to perform his duties toward her. However, she was not made irresponsible. Above all, she had to live a pure life. Failing in this she lost every claim for lenient consideration and fell hopelessly under the ban of social condemnation. She also had a full share in the burden and drudgery of life, and was in no way a pampered society idol. A simple and severe dignity marked her life. The laws in reference to divorce and infidelity were harsh and even cruel in the punishment prescribed for women, but it must not be overlooked that the questions of divorce were subject to the judgment of the *sippe*, and as long as her life was blameless she would be protected against abuse, and her social influence would not suffer.

CHAPTER VI.

WIDOWHOOD.

THE consideration of this period and condition of life has been partly anticipated in the preceding chapters. It has been noted that some of the Germanic people valued woman less during the period of declining usefulness than during the years of her greatest social service, and that no such distinction was made by others. Likewise the prominent place of the widowed mother in the family and in the state has been pointed out. It remains now to consider those facts which pertain especially to her condition in widowhood and old age. Her material well-being, her right to inherit and acquire property, her relations to her children, her family, and her *sippe*, will form the substance of this inquiry.

Before taking up the main subject, a brief examination must be made of the generally accepted opinion, that in prehistoric times the life of the wife terminated with that of her husband, that at his death custom compelled her to take her own life, in order to accompany him to the other world. Such a custom has not been uncommon. It has been found among many primitive people living in widely separated localities;¹ and, where it has not been prevalent in historic time, stories and legends have preserved the memory of its existence.² The practice, therefore, would seem to have been common to a certain period in the evolution of society. Nor is the origin of the custom inconsistent with the selfish element in man. When the belief in a future life had once become fixed in the human mind, the desire to possess all that had contributed to man's pleasure or had satisfied his wants here would assert itself. This is simple enough, and may be readily admitted; but, when the inquiry is confined to a specific people and to the definite causes which gave rise to the custom, the most intricate, and perhaps insolvable, problems present themselves.

A certain degree of uniformity and similarity in the evolution of all social organizations must be conceded; but the radical difference in this evolution is also an indisputable fact. Contrast the English people with the Hindus. Both are of the Aryan race, yet their respective

¹ WESTERMARK, p. 125.

² GRIMM, *R. A.*, p. 451; WEINHOLD, Vol. II, pp. 9 ff.

civilizations have little in common. This dissimilarity is a result of a divergence in development. The existence of a custom among one people does not of itself prove anything in respect to the other. Analogies may be suggestive and comparisons helpful in confirming internal evidence, but nothing more. The evolution of all life-forms tends toward variety, and human institutions and customs are no exception to the general law. So, the burning of the widow in India does not prove the practice among other Aryan people any more than the hermit crab proves that at one time all crabs were possessed of its characteristics. If many, or the majority, of the people of the same race are found to have had the same customs, the probability is that it was common to all, yet, in the absence of more specific evidence, it remains a mere inference.

The causes which gave rise to the sacrifice of the widow could not have had their origin in the most primitive state of man. Definite ideas of the future life and its government must first have been formulated. The wife must have been entirely in the power of the husband. Laws and religion must have sanctioned the selfish and brutal desires of man; for this sacrifice cannot be assumed to have sprung from love and devotion. Its prerequisite was the family, with the husband and father as the absolute master. The mother-age had passed, and a new social order had taken its place. Language, religion, and customs had been differentiated. Consequently, what was true of one people might or might not be true of even a kindred people.

That the Germans did not indulge in this practice in the historic period is scarcely questioned. None of the early writers refers to it except Procopius. He affirms it of one of the German tribes—the Heruli.¹ Remembering the other incredible stories with which this writer sought to entertain his readers, this statement may well be regarded with suspicion. The evidence we have consists mainly in story and legend, and this is not only meager, but of doubtful application. An examination of the proof adduced by Dr. Weinhold in favor of this custom among the ancient Germans will make this apparent.² First is the old belief that the gates of the nether-world fell heavily upon the heels of the husband who passed through them alone. The inference is that the wife was obliged to accompany her husband in death to save his heels. However, it may reasonably be asked: How about the husband if his wife should die first? She was

¹ GRIMM, *R. A.*, p. 457.

² *Deutsche Frauen*, Vol. II, pp. 9, 10.

essential to his safety, but there is no implication that she needed his protection. Would he not be compelled either to marry at once or to join his wife in death in order to insure the safety of his precious heels? However we may interpret this belief, there can be no denial of the fact that it emphasizes the dangers to which man exposes himself when he passes beyond the protection of his wife.

The second case in evidence of this custom is the legend of Brynhild. Love impelled her to cause Sigurd to be murdered. Then, moved by this same love, she stabbed herself and had herself placed upon a funeral pile by the side of Sigurd. By this means she hoped to obtain the enjoyment of his undivided love in the future life. History has recorded so many similar love tragedies that this specific case proves nothing, except that love demanded her sacrifices in primitive as well as in modern society.

A third instance cited is that of Austriguild, the queen of the Franks. When dying, this envious woman demanded that someone should die with her. Two physicians were made the victims of this cruel request. No clearer demonstration of a lack of evidence could be found than to adduce such a fact in proof of a practice which had been obsolete for centuries. If the high privilege of a cruel wife proves the sacrifice of women in primitive life to satisfy the selfish desires of their husbands, then what may not be dragged in as proof! Beyond denoting the caprice of a hateful woman and the barbarism of the age in which she lived, the case has no significance. Certainly, if any inference could be drawn from the case, it would be a contradiction of the theory it was to prove. This is clearly an example of privilege, and not of sacrifice and duty of women.

Besides this supposed evidence in regard to the Germans on the continent, Norway and Iceland are drawn upon for two other instances. In the first a young maid refused the hand of an old man because she feared his early death; for the law of the land demanded that the wife should end her life at the death of her husband. In the second, a man on leaving home commanded his wife that, as soon as she should learn of his death, she should perform the burial rites, and burn herself with all their possessions. The former is alleged to have occurred in the tenth and the latter in the eleventh century. Strange, indeed, that no case of actual burning has been recorded!

The flimsiness and insufficiency of the evidence need no comment. The theory is hardly more than a mere opinion. Whether or not the widows among the Germans were burned may be an interesting sub-

ject for speculation, but the more important fact is that the evil did not become rooted in the life of the people, and that their social life was not permanently affected by it.

In contrast with this supposed practice, we have stories of the devotion of husbands. We are told that they remained at the graves of their wives and would not be separated from them.¹ It is related that an old couple, after dividing their substance among relatives, threw themselves cheerfully from a high rock in order to be united in a common death.² Such tender affection and faithfulness might easily serve as the basis of a beautiful theory, if it were not for the fact that the extraordinary is transmitted in song and story rather than the ordinary. A few examples of either extreme cruelty or exceptional kindness do not prove a general custom.

It is also held that in the early historic period the widow was not permitted to marry. According to Tacitus, second marriages were not favored,³ and this is fully in harmony with the ideal marriage state which he describes. Modern writers have claimed that the oldest Germanic laws contain traces of this restriction.⁴ So positive a statement is not warranted by the facts. On the fulfillment of certain conditions, none of the laws prohibit such marriages.⁵ Some limitations were imposed by the laws. The widow was not to marry within twelve months after the death of her husband; the consent of her relatives was usually required; certain payments had to be made by her prospective husband; and she lost some of her property. Most of these regulations were obviously for the purpose of protecting the interest of her children and of her *sippe*. They were not necessarily traces of former restrictions. They contain nothing inconsistent with the demands of the society of which she was a part. Widows did marry, and the laws provided for these marriages as a common occurrence, and the absolute prohibition of them in the immediate past is improbable.

If there had been a period in which the widow was burned, and if in the subsequent period she was prohibited from marrying, it would follow that she could have had no rights and but scant protection. Her life would have carried with it the reproach and disrespect which a breach of sacred obligation entails. Of this, however, there is no con-

¹ WEINHOLD, Vol. II, pp. 8, 9.

² GRIMM, *R. A.*, p. 486.

³ TAC., *Germ.*, c. 19.

⁴ GRIMM, *R. A.*, p. 453; WEINHOLD, Vol. II, pp. 35, 36.

⁵ *L. Sal.*, tit. 47; *L. Sax.*, tit. 7; THORPE, Vol. I, pp. 311, 323.

firmation. The Lombard legend places the widowed mother as the most important personage at the beginning of Lombard history.¹ The prominent place of the mother in the history of other Germanic people has been noticed in previous chapters. It would have been a most remarkable transformation if a period in which the widow had not even a right to live, or was barely permitted to live, had been followed by one in which she was highly respected and influential.

If there are faint echoes of barbaric treatment of the widow in the tradition of the Germans, the custom had been displaced by more generous laws before the race had passed its childhood. In the early historic period she had specific rights and privileges. Most of the laws define her status and her claims. She had a right to certain property, her children were usually left in her care, and her *sippe* was intrusted with the protection of both herself and children.

The right to property is a fair index of the material well-being of an individual, and this is also true in primitive society. The customs and laws of succession furnish a basis on which such rights may be estimated. In his *Germania* Tacitus stated that among the Germans the heirs and successors to anyone were his children, that no testament was made, and that in the absence of his children the nearest kin succeeded — brothers, paternal uncles, maternal uncles.² The father and mother are not mentioned. Presumably, as long as either parent lived the property was not divided. In this general statement female relatives receive no notice. Nothing is said as to the nature of the property subject to inheritance or the method of division. Land could form no part of such property, for it had not passed into private ownership.³ The wider circle of relatives which, because of their common responsibilities,⁴ must have had certain claims is also not mentioned. On all these points the statement is incomplete, and this deficiency has led to many different interpretations.

The next in point of time is the Salic law, and it contains a somewhat clearer statement. The several texts extant vary in some minor points. To present all the details of the law, I quote one of the texts in full:

¹ *Longobarden-Geschichte*, I, c. 3.

² *TAC., Germ.*, c. 20.

³ *CAE., B. G.*, VI, c. 22; *TAC., Germ.*, c. 26.

⁴ *CAE., B. G.*, VI, c. 22; *TAC., Germ.*, c. 20, c. 21.

DE ALODIS.

1. Si quis mortuus fuerit et filios non dimiserit, si mater sua superfuit, ipsa in hereditatem succedat.

2. Si mater non fuerit et fratrem aut sororem dimiserit, ipsi in hereditatem succedant.

3. Tunc si ipsi non fuerint, soror matris in hereditatem succedat.

4. Et inde de illis generationibus, quicumque proximior fuerit, ille in hereditatem succedat.

5. De terra vero nulla in muliere hereditas non pertinebit, sed ad virilem sexum qui fratres fuerint tota terra pertineunt.¹

CONCERNING THE ALODE.

1. If anyone has died and left no children, if the mother survives she succeeds to the heritage.

2. If there is no mother and a brother or sister remain, they succeed to the heritage.

3. But if these are not, the sister of the mother succeeds to the heritage.

4. And thence from those families [from the father's and mother's side], whichever is the nearest, that one succeeds to the heritage.

5. Concerning the land indeed the heritage does not pertain to women, but to the male sex who are brothers all the land pertains.

Other texts differ from this in four particulars: First, instead of mother they have father and mother. Second, they add, "if there is no sister of the mother, the sister of the father succeeds." Third, in place of those who are nearest, the succession is limited to those nearest on the paternal side. Fourth, instead of *terra* (land) they have *terra salica*. The plain statement of the law places the mother on an equal with the father, the sister with the brother, and the sister of the mother precedes the sister of the father. After these fail, the nearest relatives succeed; or, according to some texts, the paternal relatives. Furthermore, the Salic land cannot be inherited by a woman. So far the law is explicit, but on a number of points, important to us, it is silent. One of the texts does not mention the father nor the sister of the father, and none of them refers to the uncles. These omissions have placed the whole system of succession in doubt, and given rise to endless speculation and different theories.

The ancient Germans were undoubtedly so familiar with the laws of succession that this general statement was sufficient for them. It is even held that this law was merely to supplement the old order of succession; that a knowledge of the old order was taken for granted; that women, who had so far been excluded from the succession to property, were now admitted; and that, therefore, the order in which they were to succeed was definitely stated.² This theory, although

¹ AMIRA, *Erbenfolge*, pp. 222, 223.

² *Ibid.*, pp. 2, 3.

accepted by many writers, is a simple method of bridging difficulties, but offers no satisfactory explanation of them. In the first place, there is no proof that the intent of the law was to establish a new principle of succession. The Salic law consists mainly of ancient customs, and there is nothing in the law which indicates an exception in reference to these provisions of the law. Moreover, if the order in which women were to succeed was alone to be clearly stated, why should the brothers and, with one exception, the fathers also be named? Their claims must have been known better than those of anyone else. Again, if this law conceded special rights to women, why should the sister of the mother be preferred to the sister of the father? On this point all the texts agree, as also the Ripuarian law.¹ Indeed, it would have been a strange revolution if the principle of inheritance had been changed from an exclusive male succession to a preference of the female relatives on the maternal side. These are awkward facts which refuse to adjust themselves to a theory which assumes that woman was previously excluded from the succession, or to an explanation in favor of the paternal side. To supplement the Salic law from the account of Tacitus may be interesting, but does not solve the problem, as is evident from the following comparison:

SALIC LAW.	TACITUS.
1. Children.	1. Children.
2. Mother or parents.	2. Brothers.
3. Brothers and sisters.	3. Paternal uncles.
4. Sister of the mother.	4. Maternal uncles.
5. Sister of the father.	
6. Nearest relatives or paternal relatives.	

While the statement of Tacitus can to some extent be harmonized with the Salic law, it is opposed to, and does not account for, the preference given to the maternal side; and this preference cannot be questioned, because it is contained in all of the texts of Salic laws and also in the Ripuarian law. The usual course of writers in regard to this fact has been to explain it away instead of explaining it. It would seem more reasonable to seek a confirmation of the plain intent of the law. Is there nothing in the early history and the laws that would seem consistent with such a preference? The facts already stated with regard to the position of woman are certainly not in contradiction to the Salic law. We have seen that she did enjoy special

¹ *L. Ripu.*, tit. 56.

privileges, and that the maternal relationship was in some respects regarded more highly than the paternal. Another provision of the Salic law attests to this same preference. Before the marriage of a widow, her intended husband paid three solidi and one dinarius. This money was called *reipus*, and its payment legalized the marriage. All of this money went to the relatives of the widow, and only when they failed did the relatives of her former husband become the recipients.¹ While the nature of this payment is still a question of dispute,² the payment was made because of a certain interest in the widow, and is evidence of the close relations she sustained toward her kin after her marriage.³ In some respects, at least, the maternal relatives had greater rights than the paternal relatives, and there is no reason to reject this fact when it appears in the laws of succession. There is no need of surmising an innovation in the laws of succession, and no cause to slur over a plain statement in order to construct a consistent theory. In the laws of succession, as well as in other relations of life, the prominent place of the mother in the family was recognized, and the rights and claims derived from her had a corresponding importance.

The view presented does not agree with the usual interpretation of Tacitus, nor with that of the Salic law. As to the former, we should remember that the Roman family organization was different from the German. It would have been remarkable if Tacitus had fully comprehended the Germanic principle of succession. Graver mistakes have been made by modern writers in describing primitive customs, and we should not expect infallibility from an ancient writer. Incidentally we learn from the Roman writers on Germanic institutions that the law of inheritance was not strictly determined,⁴ that land was not at all subject to private ownership, and that the notion of individual property was still crude, and of common property strong.⁵ The Germans received gifts without a sense of obligation, and, if necessary, anyone would use his neighbor's substance as a matter of right. The happiness of old age depended on the number of relatives and family connections, and not on earthly possessions.⁶ The reason was that much of the property was common, rather than private, and women shared in it equally with men. The heirs designated in the *Germania*

¹ *L. Sal.*, tit. 47.

² GRIMM, *R. A.*, p. 425; AMIRA, *Erbten.*, pp. 30, 31; SCHROEDER, *D. R.*, p. 300.

³ WEINHOLD, Vol. II, p. 38.

⁴ TAC., *Germ.*, c. 32.

⁵ CAE., IV, c. 1; VI, c. 22; TAC., *Germ.*, c. 7, c. 20, c. 22, c. 26.

⁶ TAC., *Germ.*, c. 21.

may, therefore, be regarded as the representatives of the relatives of the different degrees. The relatives of each degree became in turn the common heirs. Whether the descent of property depended on male or female relationship would hardly be questioned by a Roman. The former would be taken for granted.

In the discussions of the principles of inheritance, land is usually made the starting-point.¹ This is deceptive and misleading. Land, as has been said, was not private property in the first centuries of the Christian era, and therefore could not be inherited. Among the Franks it did not pass into private ownership until the sixth century. By the *Decreto Chilperiti*, c. 3, the villagers (*vicini*) were deprived of the common right to succeed to the land. Formerly, in the absence of sons, they had possessed this right. Also, title 48 of the Salic law, in conceding the right to each member of the community to prevent anyone from settling in the village, implied that no lands could be alienated unless it was to an inhabitant of the village.

The distinction between land and other property is of primary importance. To assert that the holding of land was an original prerogative of man is to distort the facts and muddle the whole question. Private ownership of land developed during the historic period.² In primitive society movable property alone had value, and the law of inheritance in reference to it is more likely to embody ancient principles than the law in respect to land. As an illustration of this the custom of some Australian tribes may be cited. Their social order continues to be mainly determined by the mother-right. All rights and duties are derived through the mother, except the right to land. This descends from father to son, and eventually to the sons of the daughters. The reason is obvious. By the time land passed into private ownership the paternal power had gained a sufficient ascendancy to control its disposition.³ Clearly the key to the older law of succession is not to be found in the laws regulating the inheritance of land. The method of investigation suggested by this example is the only rational method. Innovations are naturally first introduced with the development of new conditions.

The provision of the Salic law by which land (*terra* or *terra salica*) must descend in the male line is no criterion of the older law. It does imply that the agnatic principle was so far predominant that

¹ WAITZ, *D. V.*, Vol. II, p. 95 ; WEINHOLD, Vol. I, p. 190.

² GIDE, *Pol. Eco.*, pp. 445 ff.

³ DARGUN, *Studien*, Vol. I, p. 138.

certain lands could not be held by woman. What these lands were is still a mooted question; probably manorial estates.¹ The lands of the common freeman retained much of their communal character, and could not be included in the *terra* of the law. When these lands became private property, they were inherited without distinction of sex.² Women acquired and disposed of land; sisters shared equally in the inheritance with their brothers.³ However, the general tendency was to restrict this privilege. Among the Burgundians, Alamanians, and Saxons the males excluded the females of the same degree with themselves, while among the Thuringians women were not admitted until the male heirs to the fifth degree failed.⁴ By the Lombard law the son excluded the daughter, while the sister had certain advantages over the brother.⁵ In Iceland, where old Germanic customs were longest preserved, all property, and even estates which had public functions, both secular and religious, attached to them, could be inherited by a daughter.⁶

The opinion was expressed that the laws determining the succession to movable possessions embodied the more ancient custom, and that, as far as the laws in reference to land were different, they were an innovation. From the preceding discussion the distinction of the two kinds of property in the law is evident. Also, it cannot be denied that the question of inheritance in regard to land did not arise until a comparatively late date, when land passed into private ownership. These facts constitute a valid reason for the view expressed.

Why a different principle should be applied to land is in part probably due to economic changes which became destructive to the old order.⁷ There seems to be a close connection between the development of agriculture and the development of the agnatic principle as the basis of the social organization. They stand in relation of cause and effect. When a people enters upon a purely agricultural stage, land becomes all-important. The preservation of society is made dependent on the military service to be rendered for its possession. Woman could not perform this service. Her exclusion from holding certain lands, the preference of male over female heirs, may

¹ AMIRA, *Erbten.*, pp. 2, 3; SCHROEDER, *D. R.*, pp. 211-13.

² SCHROEDER, *D. R.*, p. 331.

³ AMIRA, pp. 12, 13.

⁴ WEINHOLD, Vol. I, pp. 190, 191.

⁵ SCHROEDER, *D. R.* pp. 331, 332.

⁶ WEINHOLD, Vol. I, p. 190.

⁷ LAMPRECHT, *Deutsches Wirtschaftsleben im Mittelalter*, pp. 51, 52.

have had their origin in this economic evolution. The effect of this evolution is clearly seen in feudalism, and feudalism emphasized the prerogative of man.

In offering this explanation for the change in the relative importance of woman, other causes should not be overlooked. The new religion, which taught that all things, woman included, were subject to man's will, was a powerful force in determining the relations of the sexes. On the other hand, the influence of the Roman law stood for equality in private life. All of these forces were effective in molding mediæval society, and the predominance of one or the other of these forces expressed itself in the different social standing of woman.

The law of inheritance has been considered only in its bearing upon the status of woman, and the provisions made for the widow. The many disputed questions in connection with the law cannot be noticed here. The view taken differs fundamentally from those commonly accepted, but is the result of careful study. Too frequently it is assumed that the lordship of man on the one hand, and the possession of land on the other, were the determining factors of the ancient Germanic social organization. Nothing could be more unwarranted. That became true in the Middle Ages as a result of new social forces, but the earliest laws contain nothing on which such an assumption could be reasonably based.

Next to the general law of succession we must study those provisions which relate specifically to the protection and care of the widow. The Salic law contains nothing of importance beyond the law of succession and the legal forms of her marriage. If there were no children, she inherited all the property except the Salic land. What her share was when there were children the law does not state. Among the Ripuarians she received her dowry of 50 sol., one-third of the common acquisitions, and the *morgengabe* (a gift made by her husband the morning after the nuptials). Further, anything which had been legally given to her.¹ In the absence of children either of the parents could will his share of the property to the other.² However, such a grant was limited to a usufruct. After the death of both all passed to the legitimate heirs, except what had been given in charity or expended for necessities.³ The Alamanian law takes in account only the case where the widow remarried. She was permitted to take her legitimate dowry, which was 40 sol., all that she had received from her relatives, and whatever she had brought from her paternal home,

¹ *L. Ripu.*, tit. 37.

² *Ibid.*, tit. 48.

³ *Ibid.*, tit. 49.

except what had been consumed or sold.¹ It should also be noted that, if she died without giving birth to a living child, her property reverted to the nearest relatives instead of being inherited by her husband.² The claims of her relatives were superior to her husband's. If she did not enter a second marriage, she probably retained a usufruct in a share of her husband's property; for such provisions are found in a number of the Germanic laws.³ By the Bavarian law her share was equal to that of one child as long as she remained in widowhood. If she married, she retained a usufruct of a portion of her husband's goods, and her own property and dowry.⁴ Should there be no children, she received one-half of her husband's property. In the absence of any heirs he could sign over to her part or all of his property.⁵ The Burgundians allowed to a widow who entered into a second or third marriage a usufruct of her own property—that which she had received at the time of her marriage.⁶ If she remained in widowhood, she retained a third part of the property of her husband, provided there was only one child.⁷ If there was more than one child, one-fourth of the property.⁸ According to the Lombard law, the widow had the marriage gifts. However, if she returned to her former home, they were merged into the common property of the family.⁹ These gifts became so large in the early part of the eighth century that it was deemed wise to limit them by special law.¹⁰ Furthermore, the *munt* of the widow reverted to her own relatives.¹¹ It shows that the claims of her kin were second only to those of her husband, and superior to those of her husband's relatives.

More complete than any of the laws in defining property rights are those of the Visigoths; but they were partly formulated on the principles of Roman law, and are therefore of uncertain value in determining the more ancient Germanic customs. In the private relations of life woman usually enjoyed the same privileges which were conceded to man. She had equal rights with man as an heir, if she was of the same degree of relationship with him.¹² Either of the parents could be the guardian of the children in case of the other's death.¹³ Likewise, if there were neither children, grandchildren, nor great-grandchildren,

¹ *L. Alam.*, tit. 55.

² *Ibid.*, 92.

³ *L. Bajuuv.*, 14.6; *L. Burg.*, 6.2; THORPE, Vol. I, p. 23.

⁴ *L. Bajuuv.*, 14.6, 7, 9.

⁵ *Ibid.*, tit. 14.9.

⁶ *L. Burg.*, tit. 24.

⁷ *Ibid.*, tit. 62.

⁸ *Ibid.*, tit. 84.

⁹ *Ed. Roth*, 182, 199.

¹⁰ SCHROEDER, *D. R.*, p. 310.

¹¹ *Ed. Roth*, 182.

¹² *L. Wisl.*, IV, II, 9, 11.

¹³ *Ibid.*, IV, II, 13; III, 3.

either parent could do with his property whatever he pleased.¹ By another provision, if there were no living heirs to the seventh degree, the parent who survived the other became the sole heir of all of the property.² Then also either could inherit the other's property through a child; provided the child had lived at least ten days.³

In none of these provisions is there a discrimination in favor of either sex. But this equality does not obtain throughout. For example, if there were children, the mother had only a usufruct of the property of her husband equal to a share of one child; but the father retained a usufruct of all of the possessions. If either married, the mother lost the usufruct of her share, while the father continued to hold one-half of the property.⁴ In case of a second marriage, the mother was deprived of the right of guardianship, but not the father.⁵ If the widow entered into illegitimate wedlock, or married a freedman or serf, she lost all rights, and all her possessions passed to the children of her former husband, or, in default of such, to other heirs of the deceased.⁶

These laws denote the relative position of the widow among the Visigoths. Evidently the main purpose was to guard the interest of the children. The father being better able than the mother to give protection to the children in case of a second marriage, his property rights were accordingly less restricted.

Another fact must be noted in this connection—the influence of biblical precepts upon the legal conception of the people. This is clearly shown by a law which declared that the property acquired through the slaves of the wife belonged to her husband. The reason given was not that it was in accordance with ancient customs, but that, according to the Holy Scripture, the wife was in the power (*potestas*) of her husband, and therefore also her slaves.⁷ Here we have a source of law which became a powerful factor in the Middle Ages, especially in defining the rights of woman.

The laws of the Old Saxons, Thuringians, and Frisians are very limited in their information on the status of the widow. By the Saxon law, if she had given birth to children, she had the dowry during her lifetime. Otherwise the dowry reverted to him who had given it, or his nearest heirs.⁸ Among a part of the people the reverse seems to have been the rule—the wife lost her claims to the dowry when she had

¹ *L. Wisl.*, IV, II, 20.

² *Ibid.*, IV, II, 11.

³ *Ibid.*, IV, II, 18.

⁴ *Ibid.*, IV, II, 13, 14.

⁵ *Ibid.*, IV, II, 13; III, 3.

⁶ *Ibid.*, III, II, 1, 2.

⁷ *Ibid.*, IV, II, 15.

⁸ *L. Sax.*, tit. VIII.

children.¹ There was also a distinction in regard to the common acquisitions. In the western part of the country she received one-half, while in the eastern part she had no claim to any part of them, but had to be contented with her dowry.²

The last to be examined are the Anglo-Saxon laws. The widow was confirmed in one-half of the property by the laws of Aethelberth.³ She obtained the same amount if she wished to go away with her children — presumably leave her husband.⁴ However, if the husband desired to keep the children, her share was equal to that of one child.⁵ If she bore no children, her paternal kin had the “feoh” (her own property).⁶ It is probable that this law implied that she returned home, and that her property became merged with the common property of the family.⁷

From other laws we learn that the children remained in the care of the widow, and that the relatives were placed under a common obligation to provide for them and guard the property until the child was ten years of age. The widow was to receive 6 shil. for the fostering of a child; “a cow in summer and an ox in winter.”⁸ By a law of Cnut, the wife and children were to be protected in dwelling unmolested where the husband had dwelt; provided, however, that there had been no claim against him.⁹

Other provisions of a more general nature contain exhortations not to oppress widows, and threats of severe punishment to anyone who should commit any violence against them.¹⁰

In this presentation of the principal facts, we have a fair indication of the status of the widow. Whether in the dark past she was a victim of a cruel practice or not is of little consequence. At the dawn of history there was scarcely a trace left of it, and she did not share the lot of her class among kindred races. Her welfare was guarded by generous laws. She was favored by the laws of succession. Liberal gifts enforced by custom, and definite rights to property, provided for her wants and contributed to her comforts. Ordinarily she was free to marry or remain single, according to her pleasure. She was not oppressed by onerous restrictions, and no place of influence was closed to her.

¹ *L. Sax.*

² *Ibid.*, tit. IX.

³ *Aeth.*, 78.

⁴ *Ibid.*, 79.

⁵ *Ibid.*, 80.

⁶ *Ibid.*, 81.

⁷ THORPE, *Anc. L. Inst.*, Vol. I, p. 25, note *d*.

⁸ *Ibid.*, Vol. I, pp. 31, 127.

⁹ *Ibid.*, pp. 415, 416.

¹⁰ *Ibid.*, pp. 325, 327, 407.

Measured by the protection which the ancient Germans accorded to woman, their ideal of womanhood and of family-life was more pure and noble than the ideal of any other people. This has been the greatest contribution which the German race has made to civilization. The source of what has been best in the German character, it remains one of the most precious possessions of the race. In the history of the world nothing has been of greater moment than that this people, with these ideals, should assume the leading rôle upon the world-stage, when the example of a perfect life and the great truths of a universal and ever-true religion made possible the brotherhood of man. The ideals of the Germans, and the fundamental principles of the Christian religion, have been the determining forces in the history of the last eighteen centuries. Without either our modern civilization would not have been possible. True, the German ideals were accompanied by barbarism, and the Christian religion by a low estimate of womanhood, and for a time this barbarism and this degradation of woman swept the world into almost hopeless darkness, but the chivalrous spirit of the Germanic nations gradually reasserted itself, and religion became again a weapon of individual freedom. A monk at Wittenberg dared to assert the insufficiency of man without the influence and companionship of woman. The home and the family became again the most sacred institution. The quick sympathy and the graceful gentleness of woman inspired the social life with new and higher ideals. Religion was vitalized by her touch and stimulated to its modern achievements by her influence. Wherever this influence has been unrestricted, wherever the Germanic people, and especially the Anglo-Saxons, have carried their ideals of womanhood and of the family, there life has been transformed, and civilization has gained its best results.

"The eternal womanly
Draws us above."

